D-0378 SUPREME COURT OF TEXAS CASES 003
EDGEWOOD INDEPENDENT SCHOOL DISTRICT V. KIRBY 1990-91

D 0378 DIRECT APPEAL

No. D-0378

* * * * * * * * *

IN THE

SUPREME COURT OF TEXAS

* * * * * * * * *

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, et al.,

Petitioners

V.

WILLIAM N. KIRBY, et al.,

Respondents

APPELLEES-STATE DEFENDANTS' SUPPLEMENT TO THEIR RESPONSE TO APPELLANTS-PLAINTIFFS' STATEMENT OF JURISDICTION

In a footnote on page four of their response State defendants suggested that there were factual issues that might need to be resolved in this appeal. The purpose of this supplement is to state those issues more clearly.

Plaintiffs claim an entitlement to injunctive relief which would immediately set aside Senate Bill 1. The Court in its order "consider[ed] enjoining the expenditure of all State and local funds or ordering defendants to disburse available funds in the most efficient manner until such time as the Legislature does establish an efficient system." Order at 3. In addition to the legal arguments State defendants would make in opposition to this relief, to understand the chaos in education which would result from it

requires an understanding of facts. Additionally, if the manner set out in S.B. 1 is unacceptable for "disbursing available funds in the most efficient manner," defendants need interim guidelines.

State defendants will argue the constitutionality of S.B. 1 on cross-appeal. The Court grants that, "the efficiency of Senate Bill 1 must be measured against the alternatives," and acknowledges some power to the State's argument that "... the alternatives ... are either more undesirable, politically unacceptable, or themselves unconstitutional." (Order at 24) The Court finds, "beyond that, if an equalization plan without caps is the only solution, Senate Bill 1 is not an acceptable version." (Order at 27) Though this can be posed as a legal issue, it interfaces with factual issues on which this Court may need further elucidation.

There are a series of factual disputes inherent in the trial court's judgment, memorandum opinion and additional findings that have not yet been fully resolved. In response to the trial court's judgment and opinion, State defendants submitted a request for additional amended findings of fact (a copy of which is provided as Exhibit 1 in State defendants' Appendix). In response thereto the trial court filed additional findings on October 11, 1990 (Exhibit 3, Appendix). The additional findings raise new issues as to

the factual underpinnings of the trial court's order. Additional finding No. 1, for example, finds that State's Exhibit J.1 at pages 2-6 are accurate given the underlying assumptions; however, the underlying assumptions are not recited in the Finding of Facts (pp. 2-6, Exhibit 2, Appendix). Another problem arises in the Court's "finding" that the underlying assumptions are improbable. The Court provides no guidance as to what the underlying factual basis to support that statement might be and this Court may have to remand this issue to the trial court.

State defendants have similar difficulties with the trial court's finding regarding the role of the Foundation School Fund Budget Committee. Defendants disagree with the court's characterization of the Committee's function. See No. 3 Ex. 3. Again, the trial court does not inform State defendants as to whether this determination has a factual basis in the record. To the extent it does, the factual basis for the trial court's judgment and finding will of necessity be challenged by State defendants. The above issues are presented as examples and are not meant to limit in any way State defendants' potential points of error.

State defendants do not wish to delay consideration of the issues raised by the district court's order finding S.B.1 unconstitutional. State defendants recognize that constitutional decisions of this magnitude must ultimately

be decided by the Supreme Court. State defendants urge this Court, in assuming jurisdiction, to be mindful of the necessity of providing for resolution of these issues. State defendants will continue during the time available under Rule 40 T.R.A.P. to resolve factual concerns at the trial court level.

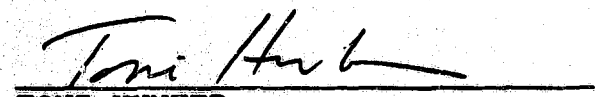
Respectfully submitted,

JIM MATTOX
Attorney General of Texas

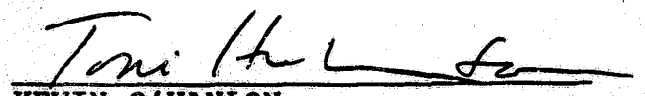
MARY F. KELLER
First Assistant Attorney General

LOU McCREARY
Executive Assistant
Attorney General

JAMES C. TODD, Chief
General Litigation Division



TONI HUNTER
Assistant Attorney General
State Bar No. 10295900
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 463-2120



KEVIN O'HANLON
General Counsel
Texas Education Agency
State Bar No. 15235500
1701 Congress
Austin, Texas 78711
(512) 463-9720

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent via U.S. Mail, certified, return receipt requested, on this the 23rd day of October, 1990 to all counsel of record.

Toni Hunter

TONI HUNTER
Assistant Attorney General

Mrs. Alice Laverne Kennedy
Austin, TX 78704-4004
Soc. Sec. # 466-36-9619

D 0378

(better math teachers, cheaper)

clerk
Texas State Supreme Court
associate, staff member
dear friend,

1989 Edgewood School Board versus Kirksey case,
there is how Kirksey could assist, if backed by a court
order, the Edgewood Independent School District obtain
better qualified math teachers, for less money, too.
As in the Griswold versus Connecticut case, 1965,
federal, toward a court order, the known practice, no guessing,
shows the intent, 1776, of the founders by their usual actions.

So, 1776, a man or woman with a BA could & did
teach math in high schools, just as today, TA's, or 1990, these
teaching assistants teach math today in first rank
world class colleges, including in the USA today.

In conflict of laws, commonsense applies, and it is
known to work, so, nil noc bonere, it might help and
not make matters worse. People with BA's in Math can & should
teach math in high schools, in Texas.

It's alternate certification, of course, and advocates
of alternate certification include Education Sec'y,
Cavazos of Wash. D.C.

T.E.A. could thus deliver better quality service, such
as math education to students in all high schools
in Texas, in both schools backed with a high tax
rate and those where tax-rates on about the same
type of dwelling house or business house, such as a
small retail shop are appreciably lower, too; the
last being so difficult to adjudicate.

Best wished

mrs. Alice Spooner 12-6-90

I have made only those changes either expressly directed or necessarily implied by the Supreme Court. I have made no other change.

I have set a hearing for April 1 to hear the report of the Attorney General on the steps taken to comply with this judgment. If the news is good, our hearing will be brief. If the news is bad, we may be together longer. In the event of bad news, if they are able, I am requesting Mr. Hutchinson and Mr. Arnett to appear as friends of the court.

Very truly yours,

F. Scott McCown

F. SCOTT McCOWN
Judge, 345th District Judge
Travis County, Texas

FSM/pc

Enclosure
cc: Amalia Rodriguez-Mendoza, District Clerk, Travis County
John Adams, Clerk of the Supreme Court of Texas

NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL., Plaintiffs, and ALVARADO INDEPENDENT SCHOOL DISTRICT, ET AL., Plaintiff-Intervenors, V. THOMAS ANDERSON, ET AL., Defendants, ANDREWS I.S.D., ET AL., Defendant-Intervenors, and ARLINGTON I.S.D., ET AL., Defendant-Intervenors.	§	IN THE DISTRICT COURT OF TRAVIS COUNTY, T E X A S 250TH JUDICIAL DISTRICT

REVISED FINAL JUDGMENT

I.

On the 24th day of September, 1990, this court rendered and signed its final judgment. On the 22nd day of January, 1991, acting on an application for enforcement of mandate, the Supreme Court directed this court to revise its judgment in certain particulars. On the 25th day of February, 1991, the Supreme Court overruled plaintiff-intervenors' motion for rehearing. The following is this court's revised final judgment.

II.

FILED

FEB 26 1 18 PM '91

DISTRICT CLERK
TRAVIS COUNTY, TEXAS

On the 9th day of July, 1990, came on to be heard Plaintiffs' Motion for Modification of Judgment; Plaintiffs' Motion for Temporary Injunction; Plaintiffs' Amended Request

for Enforcement of Judgment; and Plaintiff-Intervenors' Amended Petition for Supplemental Relief. All parties appeared through counsel.

After hearing the evidence and arguments, the court ORDERS as follows:

1) Plaintiffs' Motion for Modification of Judgment is DENIED WITHOUT PREJUDICE;

2) Plaintiffs' Motion for Temporary Injunction is DENIED;

3) Plaintiffs' Amended Request for Enforcement of Judgment is DENIED IN PART and GRANTED IN PART as detailed below;

4) Plaintiff-Intervenors' Amended Petition for Supplemental Relief is DENIED IN PART and GRANTED IN PART as detailed below.

Declaratory Judgment

Pursuant to the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code, § 37.004, the court DECLARES that Article 1 of Senate Bill 1, an act relating to public education, passed by the Legislature on June 5, 1990, and signed into law by the Governor on June 7, 1990, effective September 1, 1990, does not "establish and make suitable provision for the support and maintenance of an efficient system of free public schools," as required by Article VII, Section 1, of the Constitution of Texas, as interpreted by

the Supreme Court of Texas in Edgewood I.S.D. v. Kirby, 777 S.W.2d 391 (Tex. 1989). The Texas School Financing System remains unconstitutional because it continues to deny school "districts . . . substantially equal access to similar revenues per pupil at similar levels of tax effort."

Injunctive Relief

It is therefore ORDERED that Thomas Anderson, Interim Commissioner of Education, the Members of the Texas State Board of Education, and John Sharp, Comptroller of the State of Texas, and their successors, and each of them, be and are hereby enjoined from giving any force and effect to the sections of the Texas Education Code relating to the financing of education, including the Foundation School Program Act (Chapter 16 of the Texas Education Code); specifically defendants are enjoined from distributing any money under the current Texas School Financing System (Texas Education Code § 16.01, et seq., implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education).

It is further ORDERED that this injunction shall in no way be construed as enjoining defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Texas

ECucation Code.

To allow sufficient time to enact a constitutionally sufficient plan for funding public education, this injunction is stayed until April 1, 1991. It is further ORDERED that in the event the legislature enacts a constitutionally sufficient plan by April 1, 1991, this injunction is further stayed until September 1, 1991, in recognition that any modified funding system may require a period of time for implementation. This requirement that the modified system be in place by September 1, 1991, is not intended to require that the modified system be fully implemented by September 1, 1991.

Retention of Jurisdiction and Order for Hearing

Pursuant to the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code, § 37.011, and the court's authority to enforce its judgment, the court retains jurisdiction to grant further relief if necessary.

All parties are ORDERED to appear before the court at 9:00 a.m on April 1, 1991. At that time the Attorney General shall advise the court of the steps taken to comply with its order.

Miscellaneous

This judgment shall have prospective application only

Education Code.

To allow sufficient time to enact a constitutionally sufficient plan for funding public education, this injunction is stayed until April 1, 1991. It is further ORDERED that in the event the legislature enacts a constitutionally sufficient plan by April 1, 1991, this injunction is further stayed until September 1, 1991, in recognition that any modified funding system may require a period of time for implementation. This requirement that the modified system be in place by September 1, 1991, is not intended to require that the modified system be fully implemented by September 1, 1991.

Retention of Jurisdiction and Order for Hearing

Pursuant to the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code, § 37.011, and the court's authority to enforce its judgment, the court retains jurisdiction to grant further relief if necessary.

All parties are ORDERED to appear before the court at 9:00 a.m on April 1, 1991. At that time the Attorney General shall advise the court of the steps taken to comply with its order.

Miscellaneous

This judgment shall have prospective application only

D-0378 SUPREME COURT OF TEXAS CASES 003
EDGEWOOD INDEPENDENT SCHOOL DISTRICT V. KIRBY 1990-91

D 0378 DIRECT APPEAL

No. D-0378

* * * * * * * * *

IN THE

SUPREME COURT OF TEXAS

* * * * * * * * *

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, et al.,

Petitioners

V.

WILLIAM N. KIRBY, et al.,

Respondents

APPELLEES-STATE DEFENDANTS' SUPPLEMENT TO THEIR RESPONSE TO APPELLANTS-PLAINTIFFS' STATEMENT OF JURISDICTION

In a footnote on page four of their response State defendants suggested that there were factual issues that might need to be resolved in this appeal. The purpose of this supplement is to state those issues more clearly.

Plaintiffs claim an entitlement to injunctive relief which would immediately set aside Senate Bill 1. The Court in its order "consider[ed] enjoining the expenditure of all State and local funds or ordering defendants to disburse available funds in the most efficient manner until such time as the Legislature does establish an efficient system." Order at 3. In addition to the legal arguments State defendants would make in opposition to this relief, to understand the chaos in education which would result from it

requires an understanding of facts. Additionally, if the manner set out in S.B. 1 is unacceptable for "disbursing available funds in the most efficient manner," defendants need interim guidelines.

State defendants will argue the constitutionality of S.B. 1 on cross-appeal. The Court grants that, "the efficiency of Senate Bill 1 must be measured against the alternatives," and acknowledges some power to the State's argument that "... the alternatives ... are either more undesirable, politically unacceptable, or themselves unconstitutional." (Order at 24) The Court finds, "beyond that, if an equalization plan without caps is the only solution, Senate Bill 1 is not an acceptable version." (Order at 27) Though this can be posed as a legal issue, it interfaces with factual issues on which this Court may need further elucidation.

There are a series of factual disputes inherent in the trial court's judgment, memorandum opinion and additional findings that have not yet been fully resolved. In response to the trial court's judgment and opinion, State defendants submitted a request for additional amended findings of fact (a copy of which is provided as Exhibit 1 in State defendants' Appendix). In response thereto the trial court filed additional findings on October 11, 1990 (Exhibit 3, Appendix). The additional findings raise new issues as to

the factual underpinnings of the trial court's order. Additional finding No. 1, for example, finds that State's Exhibit J.1 at pages 2-6 are accurate given the underlying assumptions; however, the underlying assumptions are not recited in the Finding of Facts (pp. 2-6, Exhibit 2, Appendix). Another problem arises in the Court's "finding" that the underlying assumptions are improbable. The Court provides no guidance as to what the underlying factual basis to support that statement might be and this Court may have to remand this issue to the trial court.

State defendants have similar difficulties with the trial court's finding regarding the role of the Foundation School Fund Budget Committee. Defendants disagree with the court's characterization of the Committee's function. See No. 3 Ex. 3. Again, the trial court does not inform State defendants as to whether this determination has a factual basis in the record. To the extent it does, the factual basis for the trial court's judgment and finding will of necessity be challenged by State defendants. The above issues are presented as examples and are not meant to limit in any way State defendants' potential points of error.

State defendants do not wish to delay consideration of the issues raised by the district court's order finding S.B.1 unconstitutional. State defendants recognize that constitutional decisions of this magnitude must ultimately

be decided by the Supreme Court. State defendants urge this Court, in assuming jurisdiction, to be mindful of the necessity of providing for resolution of these issues. State defendants will continue during the time available under Rule 40 T.R.A.P. to resolve factual concerns at the trial court level.

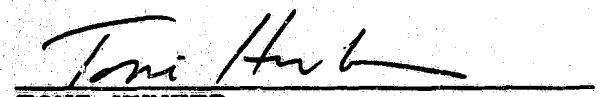
Respectfully submitted,

JIM MATTOX
Attorney General of Texas

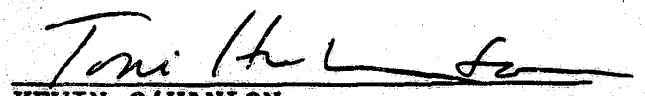
MARY F. KELLER
First Assistant Attorney General

LOU McCREARY
Executive Assistant
Attorney General

JAMES C. TODD, Chief
General Litigation Division



TONI HUNTER
Assistant Attorney General
State Bar No. 10295900
General Litigation Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 463-2120



KEVIN O'HANLON
General Counsel
Texas Education Agency
State Bar No. 15235500
1701 Congress
Austin, Texas 78711
(512) 463-9720

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent via U.S. Mail, certified, return receipt requested, on this the 23rd day of October, 1990 to all counsel of record.

Toni Hunter

TONI HUNTER
Assistant Attorney General

Mrs. Alice Laverne Kennedy
Austin, TX 78704-4004
Soc. Sec. # 466-36-9619

D 0378

(better math teachers, cheaper)

clerk
Texas State Supreme Court
associate, staff member
dear friend,

1989 Edgewood School Board versus Kirksey case,
there is how Kirksey could assist, if backed by a court
order, the Edgewood Independent School District obtain
better qualified math teachers, for less money, too.
As in the Griswold versus Connecticut case, 1965,
federal, toward a court order, the known practice, no guessing,
shows the intent, 1776, of the founders by their usual actions.

So, 1776, a man or woman with a BA could & did
teach math in high schools, just as today, TA's, or 1990, these
teaching assistants teach math today in first rank
world class colleges, including in the USA today.

In conflict of laws, commonsense applies, and it is
known to work, so, nil noc bonere, it might help and
not make matters worse. People with BA's in Math can & should
teach math in high schools, in Texas.

It's alternate certification, of course, and advocates
of alternate certification include Education Sec'y,
Cavazos of Wash. D.C.

T.E.A. could thus deliver better quality service, such
as math education to students in all high schools
in Texas, in both schools backed with a high tax
rate and those where tax-rates on about the same
type of dwelling house or business house, such as a
small retail shop are appreciably lower, too; the
last being so difficult to adjudicate.

Best wished

mrs. Alice Spooner 12-6-90

STUDIES	LEB AND FSFBC
Interim studies done on a biennial basis (TEC 16.202)	*Adoption by Legislative Education Board by October 1 and by Foundation School Fund Budget Committee by December 1 (TEC 16.008(b) and 16.256(e))*

(a)(1) fiscal neutrality
[further defined by 16.001(b)&(c)]

→ The combination of all funding elements must meet state policy of fiscal neutrality as set forth in TEC 16.001.

	Tier 1
(2) accountable costs *[for calculation of basic allotment]*	(1) basic allotment that covers cost of providing basic criteria for accredit program
(3) cost of education index *[further defined by TEC 16.203(b)&(c)]*	(2) cost of education index to cover geographic cost variation
(4) program cost differentials *[weights]*	(3) program cost differentials to cover special populations, transportation, etc.
(5) transportation and career ladder *[further defined in TEC 16.156 (Transportation) and TEC 16.158 (Career Ladder)]*	
	Tier 2
(6) exemplary district costs *[possible cost limiting factor]*	(4) exemplary districts are maximum level of qualified state and local funds
(7) tax level studies necessary to meet equity standards in TEC 16.001 and 16.008	(5) tax rates for both tier 1 (basic allotment and weights) and tier 2 (guaranteed yield program)
(8) capital outlay and debt service requirements to supplement and exand TEC 16.401 facilities inventory	***Either tier 2 or separate facilities allotment*** (6) facilities/debt service allotment

→ Reservation of funds by Foundation School Fund Budget Committee in TEC 16.256(b)pp.

→ Legislative appropriation for biennium.

→ Repeat cycle

D 03778

Revised J

FILED
IN SUPREME COURT
OF TEXAS

FEB 27 1991

JOHN T. ADAMS, Clerk

DIRECT APPEAL

D 0378

345TH DISTRICT COURT
P. SCOTT McCOWN
JUDGE

TRAVIS COUNTY COURTHOUSE
P.O. BOX 1748
AUSTIN, TEXAS 78767
512-473-9374

February 26, 1991

Mr. Albert H. Kauffman
Staff Attorney, MALDEF
140 E. Houston Street
Suite 300
San Antonio, Texas 78205

Mr. David R. Richards
RICHARDS, WISEMAN & DURST
600 West 7th Street
Austin, Texas 78701

Mr. Richard E. Gray, III
GRAY & BECKER
700 West Avenue
Austin, Texas 78701

Ms. Toni Hunter
Assistant Attorney General
P. O. Box 12548
Capitol Station
Austin, Texas 78711-2548

Mr. Kevin O'Hanlon
General Counsel
Texas Education Agency
1701 North Congress
Austin, Texas 78701

Mr. Richard Luna
Law Offices of EARL LUNA, P.C.
4411 North Central Expressway
Dallas, Texas 75205

Mr. Jerry R. Hoodenpyle
ROHNE, HOODENPYLE, LOBERT & MYERS
P. O. Box 13010
Arlington, Texas 76013

Mr. E. Ray Hutchinson
HUTCHINSON, PRICE, BOYLE & BROOKS
3900 First City Center
Dallas, Texas 75201-4622

Mr. Richard L. Arnett
BRIM & ARNETT
505 East Huntland
Austin, Texas 78752-3714

Re: Cause No. 362,516; Edgewood Case

Dear Counsel:

Enclosed please find my revised final judgment. I delayed issuing it because the plaintiff-intervenors' motion for rehearing was pending. Now that the Supreme Court has overruled the motion and advised that it will consider no further motions, it is appropriate to issue the revised final judgment.

FILED
FEB 26 1 18 PM '91

DISTRICT CLERK
TRAVIS COUNTY, TEXAS

I have made only those changes either expressly directed or necessarily implied by the Supreme Court. I have made no other change.

I have set a hearing for April 1 to hear the report of the Attorney General on the steps taken to comply with this judgment. If the news is good, our hearing will be brief. If the news is bad, we may be together longer. In the event of bad news, if they are able, I am requesting Mr. Hutchinson and Mr. Arnett to appear as friends of the court.

Very truly yours,

F. Scott McCown

F. SCOTT McCOWN
Judge, 345th District Judge
Travis County, Texas

FSM/pc

Enclosure
cc: Amalia Rodriguez-Mendoza, District Clerk, Travis County
John Adams, Clerk of the Supreme Court of Texas

NO. 362,516

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL., Plaintiffs, and ALVARADO INDEPENDENT SCHOOL DISTRICT, ET AL., Plaintiff-Intervenors, V. THOMAS ANDERSON, ET AL., Defendants, ANDREWS I.S.D., ET AL., Defendant-Intervenors, and ARLINGTON I.S.D., ET AL., Defendant-Intervenors.	§	IN THE DISTRICT COURT OF TRAVIS COUNTY, T E X A S 250TH JUDICIAL DISTRICT

REVISED FINAL JUDGMENT

I.

On the 24th day of September, 1990, this court rendered and signed its final judgment. On the 22nd day of January, 1991, acting on an application for enforcement of mandate, the Supreme Court directed this court to revise its judgment in certain particulars. On the 25th day of February, 1991, the Supreme Court overruled plaintiff-intervenors' motion for rehearing. The following is this court's revised final judgment.

II.

FILED

FEB 26 1 18 PM '91

DISTRICT CLERK
TRAVIS COUNTY, TEXAS

On the 9th day of July, 1990, came on to be heard Plaintiffs' Motion for Modification of Judgment; Plaintiffs' Motion for Temporary Injunction; Plaintiffs' Amended Request

for Enforcement of Judgment; and Plaintiff-Intervenors' Amended Petition for Supplemental Relief. All parties appeared through counsel.

After hearing the evidence and arguments, the court ORDERS as follows:

1) Plaintiffs' Motion for Modification of Judgment is DENIED WITHOUT PREJUDICE;

2) Plaintiffs' Motion for Temporary Injunction is DENIED;

3) Plaintiffs' Amended Request for Enforcement of Judgment is DENIED IN PART and GRANTED IN PART as detailed below;

4) Plaintiff-Intervenors' Amended Petition for Supplemental Relief is DENIED IN PART and GRANTED IN PART as detailed below.

Declaratory Judgment

Pursuant to the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code, § 37.004, the court DECLARES that Article 1 of Senate Bill 1, an act relating to public education, passed by the Legislature on June 5, 1990, and signed into law by the Governor on June 7, 1990, effective September 1, 1990, does not "establish and make suitable provision for the support and maintenance of an efficient system of free public schools," as required by Article VII, Section 1, of the Constitution of Texas, as interpreted by

the Supreme Court of Texas in Edgewood I.S.D. v. Kirby, 777 S.W.2d 391 (Tex. 1989). The Texas School Financing System remains unconstitutional because it continues to deny school "districts . . . substantially equal access to similar revenues per pupil at similar levels of tax effort."

Injunctive Relief

It is therefore ORDERED that Thomas Anderson, Interim Commissioner of Education, the Members of the Texas State Board of Education, and John Sharp, Comptroller of the State of Texas, and their successors, and each of them, be and are hereby enjoined from giving any force and effect to the sections of the Texas Education Code relating to the financing of education, including the Foundation School Program Act (Chapter 16 of the Texas Education Code); specifically defendants are enjoined from distributing any money under the current Texas School Financing System (Texas Education Code § 16.01, et seq., implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education).

It is further ORDERED that this injunction shall in no way be construed as enjoining defendants, their agents, successors, employees, attorneys, and persons acting in concert with them or under their direction, from enforcing or otherwise implementing any other provisions of the Texas

ECucation Code.

To allow sufficient time to enact a constitutionally sufficient plan for funding public education, this injunction is stayed until April 1, 1991. It is further ORDERED that in the event the legislature enacts a constitutionally sufficient plan by April 1, 1991, this injunction is further stayed until September 1, 1991, in recognition that any modified funding system may require a period of time for implementation. This requirement that the modified system be in place by September 1, 1991, is not intended to require that the modified system be fully implemented by September 1, 1991.

Retention of Jurisdiction and Order for Hearing

Pursuant to the Uniform Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code, § 37.011, and the court's authority to enforce its judgment, the court retains jurisdiction to grant further relief if necessary.

All parties are ORDERED to appear before the court at 9:00 a.m on April 1, 1991. At that time the Attorney General shall advise the court of the steps taken to comply with its order.

Miscellaneous

This judgment shall have prospective application only

and shall in no way affect (i) the validity, incontestability, obligation to pay, source of payment, or enforceability of any outstanding bond, note, or other security issued, or any contractual obligation, debt, or any contractual obligation, debt, or special obligation (irrespective of its source of payment) incurred by a school district for public school purposes, nor (ii) the validity or enforceability of any tax levied, or other source of payment provided, or any covenant to levy such tax or provide for such source of payment, for any such bond, note, security, contractual obligation, debt, or special obligation, nor (iii) the validity, incontestability, obligation of payment, source of payment, or enforceability of any bond, note, or other security (irrespective of its source of payment) to be issued and delivered, or any contractual obligation, debt, or special obligation (irrespective of its source of payment) incurred by school districts for authorized purposes before September 1, 1991, nor (iv) the validity or enforceability of any tax levied, or other source of payment provided for any such bond, note, or other security (irrespective of its source of payment) issued and delivered, or any covenant to levy such tax or provide for such source of payment, or any contractual obligation, debt, or special obligation (irrespective of its source of payment) incurred before September 1, 1991, nor (v) the validity or enforceability of any maintenance tax

levied before September 1, 1991, (for any and all purposes other than as specified in clause (iv) above), nor (vi) any election held before September 1, 1991, pertaining to the election of trustees, the authorization of bonds or taxes (either for maintenance or debt purposes), nor (vii) the distribution to school districts of state and federal funds before September 1, 1991, in accordance with current procedures and law as may be modified by the legislature in accordance with law before September 1, 1991, nor (viii) the budgetary processes and related requirements of school districts now authorized and required by law during the period before September 1, 1991, nor (ix) the assessment and collection after September 1, 1991, of any taxes or other revenues levied or imposed for or pledged to the payment of any bonds, notes, or other contractual obligation, debt, or special obligation issued or incurred before September 1, 1991, nor (x) the validity or enforceability, either before or after September 1, 1991, of any guarantee under Subchapter E, Chapter 20, Texas Education Code, of bonds of any school district that are issued and guaranteed before September 1, 1991, it being the intention of this court that this judgment should be construed and applied in such manner as will permit an orderly transition from an unconstitutional to a constitutional system of school finance without the impairing of any obligation of contract incurred before September 1, 1991.

Attorneys Fees, Court Costs, and Interest

IT IS ORDERED that plaintiffs have and recover from the state their attorneys fees in the sum of One Hundred One Thousand One Hundred Ninety-Six Dollars and Eightey-Seven Cents ($101,196.87), for services through judgment, and the further sum of Fifty Thousand Dollars ($50,000), for additional services in the event of an appeal of this judgment.

IT IS ORDERED that plaintiff-intervenors have and recover from the state their attorneys fees in the sum of Ninety Four Thousand Four Hundred Forty-Six Dollars and Thirty-Four Cents ($94,446.34), for services through judgment, and the further sum of Fifty Thousand Dollars ($50,000), for additional services in the event of an appeal of this judgment.

IT IS ORDERED that plaitiffs and plaintiff-intervenors have and recover from the state all cos[illegible] of court.

IT IS ORDERED that the awards of attorneys fees for services through judgment and court costs shall earn interest at the rate established by law from the date of this court's judgment until paid, and that the awards of attorneys fees for services on appeal shall earn interest at the rate established by law from the date of the appellate judgment until paid.

All writs and processes for the collection of this

judgment shall issue as necessary.

Finality

All relief not expressly granted is DENIED.

III.

Date of Judgment

This judgment was rendered and signed on the 24th day of September, 1991, and revised and signed on the 26th day of February, 1991.

F. Scott McCown

P. SCOTT McCOWN
Judge Presiding

DIRECT APPEAL

345TH DISTRICT COURT
F. SCOTT McCOWN
JUDGE

D 0378

TRAVIS COUNTY COURTHOUSE
P.O. BOX 1748
AUSTIN, TEXAS 78767
512-473-9374

February 27, 1991

Re: Cause No. 362,516; Edgewood Case

Youth D0378

To All Counsel of Record:

I would like to call to your attention, if you have not already noticed, there are two corrections that should be made to the Revised Final Judgment. One is on page 5 "sourace" should be source and the other is page 8 "September, 1991" should be September, 1990. The original has been corrected and I have enclosed corrected pages.

Sorry for my goofs and any inconvenience this might have caused.

Sincerely,

Phyllis Carroll

PHYLLIS CARROLL
Secretary to Judge McCown

judgment shall issue as necessary.

Finality

All relief not expressly granted is DENIED.

III.

Date of Judgment

This judgment was rendered and signed on the 24th day of September, 1990, and revised and signed on the 26th day of February, 1991.

F. Scott McCown

F. SCOTT McCOWN
Judge Presiding

and shall in no way affect (i) the validity, incontestability, obligation to pay, source of payment, or enforceability of any outstanding bond, note, or other security issued, or any contractual obligation, debt, or any contractual obligation, debt, or special obligation (irrespective of its source of payment) incurred by a school district for public school purposes, nor (ii) the validity or enforceability of any tax levied, or other source of payment provided, or any covenant to levy such tax or provide for such source of payment, for any such bond, note, security, contractual obligation, debt, or special obligation, nor (iii) the validity, incontestability, obligation of payment, source of payment, or enforceability of any bond, note, or other security (irrespective of its source of payment) to be issued and delivered, or any contractual obligation, debt, or special obligation (irrespective of its source of payment) incurred by school districts for authorized purposes before September 1, 1991, nor (iv) the validity or enforceability of any tax levied, or other source of payment provided for any such bond, note, or other security (irrespective of its source of payment) issued and delivered, or any covenant to levy such tax or provide for such source of payment, or any contractual obligation, debt, or special obligation (irrespective of its source of payment) incurred before September 1, 1991, nor (v) the validity or enforceability of any maintenance tax

APPLICATION FOR WRIT OF ERROR

D 0378

DIRECT APPEAL

NO. D-0378

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellants,

V.

WILLIAM N. KIRBY, ET AL.,

Appellees.

BRIEF OF APPELLANTS' EDGEWOOD I.S.D., ET AL.

ANTONIA HERNANDEZ
NORMA V. CANTU
JOSE GARZA
JUDITH A SANDERS-CASTRO
ALBERT H. KAUFFMAN
GUADALUPE T. LUNA
Mexican American Legal Defense
& Educational Fund
140 E. Houston St., Ste. 300
San Antonio, Texas 78205
(512) 224-5476

ROGER RICE
CAMILO PEREZ
PETER ROOS
META, INC.
50 Broadway
Somerville, MA 02144

ATTORNEYS FOR APPELLANTS

NO. D-0378

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellants,

V.

WILLIAM N. KIRBY, ET AL.,

Appellees.

BRIEF OF APPELLANTS' EDGEWOOD I.S.D., ET AL.

ANTONIA HERNANDEZ
NORMA V. CANTU
JOSE GARZA
JUDITH A SANDERS-CASTRO
ALBERT H. KAUFFMAN
GUADALUPE T. LUNA
Mexican American Legal Defense
& Educational Fund
140 E. Houston St., Ste. 300
San Antonio, Texas 78205
(512) 224-5476

ROGER RICE
CAMILO PEREZ
PETER ROOS
META, INC.
50 Broadway
Somerville, MA 02144

ATTORNEYS FOR APPELLANTS

NO. D-0378

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellants,

V.

WILLIAM N. KIRBY, ET AL.,

Appellees.

CERTIFICATE OF PARTIES

In order that members of the Court may determine disqualification or reusal pursuant to Texas Rule of Appellate Procedure 74(a), Appellants certify that the following is a complete list of the parties and persons interested in the outcome of the case:

(1) William N. Kirby, State Commissioner of Education, Appellees.
(2) Texas State Board of Education, Appellees
(3) Bill Clements, Governor and Chief Executive Officer of the State of Texas, Appellees
(4) Robert Bullock, State Comptroller of Public Accountants, Appellees
(5) State of Texas, Appellees
(6) Jim Mattox, Attoreny General of Texas, Appellees
(7) Andrews Independent School District, Appellees
(8) Arlington Independent School District, Appellees
(9) Austwell Tivoli Independent School District, Appellees
(10) Beckville Independent School District, Appellees
(11) Carrollton-Farmers Branch Independent School District, Appellees

(12) Carthage Independent School District, Appellees
(13) Cleburne Independent School District, Appellees
(14) Coppell Independent School District, Appellees
(15) Crowley Independent School District, Appellees
(16) DeSoto Independent School District, Appellees
(17) Duncanville Independent School District, Appellees

(18) Eagle Mountain-Saginaw Independent School District, Appellees
(19) Eanes Independent School District, Appellees
(20) Eaustace Independent School District, Appellees
(21) Glasscock County Independent School District, Appellees
(22) Grady Independent School District, Appellees
(23) Grand Prairir Independent School District, Appellees
(24) Grapevine-Colleyville Independent School District, Appellees
(25) Hardin Jefferson Independent School District, Appellees
(26) Hawkins Independent School District, Appellees
(27) Highland Park Independent School District, Appellees
(28) Hurst Euless Bedford Independent School District, Appellees
(29) Iraan-Sheffield Independent School District, Appellees
(30) Irving Independent School District, Appellees
(31) Klondike Independent School District, Appellees
(32) Lago Vista Independent School District, Appellees
(33) Lake Travis Independent School District, Appellees
(34) Lancaster Independent School District, Appellees
(35) Longview Independent School District, Appellees
(36) Mansfield Independent School District, Appellees
(37) McMullen Independent School District, Appellees
(38) Miami Independent School District, Appellees
(39) Midway Independent School District, Appellees
(40) Mirando City Independent School District, Appellees
(41) Northwest Independent School District, Appellees
(42) Pine Tree Independent School District, Appellees
(43) Plano Independent School District, Appellees
(44) Prosper Independent School District, Appellees
(45) Quitman Independent School District, Appellees
(46) Rains Independent School District, Appellees
(47) Rankin Independent School District, Appellees
(48) Richardson Independent School District, Appellees
(49) Riviera Independent School District, Appellees
(50) Rockdale Independent School District, Appellees
(51) Sheldon Independent School District, Appellees
(52) Stanton Independent School District, Appellees
(53) Sunnyvale Independent School District, Appellees
(54) Willis Independent School District, Appellees
(55) Wink-Loving Independent School District, Appellees
(56) Edgewood Independent School District, Appellants
(57) Socorro Independent School District, Appellants
(58) Eagle Pass Independent School District, Appellants

(59) Brownsville Independent School District, Appellants
(60) San Elizario Independent School District, Appellants
(61) South San Antonio Independent School District, Appellants
(62) Pharr-San Juan-Alamo Independent School District, Appellants
(63) Kenedy Independent School District, Appellants
(64) La Vega Independent School District, Appellants
(65) Milano Independent School District, Appellants
(66) Harlandale Independent School District, Appellants
(67) North Forest Independent School District, Appellants
(68) Laredo Independent School District, Appellants
(69) Aniceto Alonzo, on his own behalf and as next friend of his children Santos Alonzo, Hermelinda Alonzo, and Jesus Alonso, Appellants
(70) Shirley Anderson, on her own behalf and as next firend of her child Derrick Price, Appellants
(71) Juanita Arredondo, on her behalf and as next friend of her children Agustin Areedondo, Jr., Nora Arredondo and Sylvia Arredondo, Appellants
(72) Mary Cantu, on her own behalf and as next friend of her children Jose Cantu, Jesus Cantu and Tonitus Cantu, Appellants
(73) Josefina Castillo, on her own behalf and as next fiend of her child Maria Coreno, Appellants
(74) Eva W. Delgado, on her own behalf and as next fiend of her children Omar Delgado, Appellants
(75) Ramona Diaz, on her own behalf and as next friend of her children Manuel Diaz, and Norma Diaz, Appellants
(76) Anita Gandara and Jose Gandara, Jr., on their own behalf and as next friends of their children Lorraine Gandara and Jose Gandara, III, Appellants
(77) Nicolas Garcia, on her own behalf and as next friend of his children Nicolas Garcia, Jr., Rodolfo garcia and Rolando Garcia, Graciel Garcia, Criselda Carcia and Rigoberto Garcia, Appellants
(78) Raquel Garcia, on her own behalf and as next fiend of her children Frank Garcia, Appellants
(79) Hermelinda C. Gonzalez, on her own behalf and as next friend of her children, Angelica Maria Gonzalez, Appellants
(80) Ricardo Molina, on his own behalf and as friedn of his child Job Fernando Molina, Appellants
(81) Opal Mayo, on her own behalf and as next friend of her children John Mayo, Scott Mayo and Rebecca Mayo, Appellants
(82) Hilda Ortiz, on her own behalf and as next friend of her child Juan Gabriel Ortiz, Appellants
(83) Rudy C. Ortiz, on his own behalf and as next friend of his children Michelle Ortiz, Eric Ortiz and Elizabeth Ortiz, Appellants

(84) Estela Padilla and Carlos Padilla, on their own behalf and as next friend of their child Gabriel Padilla, Appellants
(85) Adolfo Patino, on his own behalf and as next friend of his child Adolfo Patino, Jr., Appellants
(86) Antonio Y. Pina, on his own behalf and as next friend of his children Antonio Pina, Jr., Alma Pina and Anna Pina, Appellants
(87) Reymundo Perez, on his own behalf and as next friend of his children Ruben Perez, Reymundo Perez, Monica Perez, Raul Perez, Rogelio Perez and Ricardo Perez, Appellants
(88) Patricia A. Priest, on her own behalf and as next friend of her children Alvin Priest, Stanley Priest, Appellants

(89) Demetrio Rodriguez, on his own behalf and as next friend of his children Patricia Rodriguez and James Rodriguez, Appellants
(90) Lorenzo G. Solis, on his own behalf and as next friend of his children Javier Solis and Cynthai Solis, Appellants
(91) Jose A. Villalon, on his own behalf and as next friend of his children Ruben Villalon, Rene Villalon, Maria Christina Villalon and JAime Villalon, Appellants
(92) Alvarado Independent School District, Appellants
(93) Blanket Independent School District, Appellants
(94) Burleson Independent School District, Appellants
(95) Canutillo Independent School District, Appellants
(96) Chilton Independent School District, Appellants
(97) Copperas Cove Independent School District, Appellants
(98) Covington Independent School District, Appellants
(99) Crawford Independent School District, Appellants
(100) Crystal City Independent School District, Appellants
(101) Early Independent School District, Appellants
(102) Edcouch-Elsa Independent School District, Appellants
(103) Evant Independent School District, Appellants
(104) Fabens Independent School District, Appellants
(105) Farwell Independent School District, Appellants
(106) Godley Independent School District, Appellants
(107) Goldthwaite Independent School District, Appellants
(108) Grandview Independent School District, Appellants
(109) Hico Independent School District, Appellants
(110) Jim Hogg County Independent School District, Appellants
(111) Hutto Independent School District, Appellants
(112) Jarrell Independent School District, Appellants
(113) Jonesboro Independent School District, Appellants
(114) Karnes City Independent School District, Appellants
(115) La Feria Independent School District, Appellants
(116) La Joya Independent School District, Appellants
(117) Lampasas Independent School District, Appellants
(118) Lasara Independent School District, Appellants
(119) Lockhart Independent School District, Appellants

(120) Los Fresnos Independent School District, Appellants
(121) Lyford Independent School District, Appellants
(122) Lytle Independent School District, Appellants
(123) Mart Independent School District, Appellants
(124) Mercedes Independent School District, Appellants
(125) Meridian Independent School District, Appellants
(126) Mission Independent School District, Appellants
(127) Navasota Independent School District, Appellants
(128) Odem-Edroy Independent School District, Appellants
(129) Palmer Independent School District, Appellants
(130) Princeton Independent School District, Appellants
(131) Progresso Independent School District, Appellants
(132) Rio Grande Independent School District, Appellants
(133) Roma Independent School District, Appellants
(134) Rosebud-Lott Independent School District, Appellants
(135) San Antonio Independent School District, Appellants
(136) San Saba Independent School District, Appellants
(137) Santa Maria Independent School District, Appellants
(138) Santa Rosa Independent School District, Appellants
(139) Shallowater Independent School District, Appellants
(140) Southside Independent School District, Appellants
(141) Star Independent School District, Appellants
(142) Stockdale Independent School District, Appellants
(143) Trenton Independent School District, Appellants
(144) Venus Independent School District, Appellants
(145) Weatherford Independent School District, Appellants
(146) Ysleta Independent School District, Appellants
(147) Connie DeMarse, on her own behalf and as next friend of her children Bill DeMarse and Chad DeMarse, Appellants
(148) B. Halbert, on his own behalf and as next friend of his child, Elizabeth Halbert, Appellants
(149) Libby Lancaster, on her own behalf and as next friend of her children Client Lancaster, Lyndsey Lancaster, and Britt Lancaster, Appellants
(150) Judy Robinson, on her own behalf and as next friend of her child Jene Cunningham, Appellants
(151) Frances Rodriguez, on her own behalf and as next friend of her children Ricardo Rodriguez, and Raul Rodriguez, Appellants
(152) Alice Salas, on her own behalf and as next friend of her child Aimee Salas, Appellants

POINTS OF ERROR

1. As a matter of law, the District Court erred in refusing to enjoin Senate Bill 1 during the 1990-91 school year. (Dist. Ct. opinion pp. 1-3)

2. As a matter of law, the District Court erred in refusing to enjoin Senate Bill 1 for the 1991-92 and later years by entering an injunction appropriate to the violation found. (Dist. Ct. opinion pp. 1-3)

3. The District Court erred in modifying this Court's mandate inconsistent with this Court's opinion. (Dist. Ct. opinion pp. 1-3)

4. As a matter of law, the District Court erred in failing to award Plaintiffs Attorneys Fees for reasonable and necessary fees and expenses undertaken in representing Plaintiffs before the date of the passage of Senate Bill 1. (Dist. Ct. opinion p. 6)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional and Statutory Authorities

Other Authorities

NO. D-0378

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellants,

V.

WILLIAM N. KIRBY, ET AL.,

Appellees.

BRIEF OF APPELLANTS' EDGEWOOD I.S. D., ET AL.

I.

INTRODUCTION

Children in Texas have never had equal educational opportunity. Although in this case the Justices of the Court as well as the members of the Bar must confront important and complex issues of constitutionality of state legislation and the relationship between the judiciary and the legislature, we must not forget that ultimately this is a case in which one million students are seeking a remedy for a long term violation of their state constitutional rights. Only the continued intransigence of the Governor and the Legislature have forced this issue into the

judicial arena before this Court, the final arbiter of state constitutional rights.

This case involves the power of a court to enforce its judgment. More precisely it involves the power of a district court to issue a detailed injunction against state officials who have previously failed to meet the judgment of that district court, especially when that district court judgment has been affirmed by the Texas Supreme Court. The constitutional rights of Plaintiffs are irreparably trammeled by failure of the State to comply with the order of the District Court.

The District Court has found the structure, content, and philosophy of Senate Bill 1 unconstitutional under the Texas Constitution as interpreted by this Court in Edgewood v. Kirby. The lack of a proper injunctive decree will tie the parties into a schedule guaranteeing constitutional crisis and unfair treatment to the Plaintiffs. This is clearly not the intent of the District Court; however the record of the case proves that the Defendants have consistently ignored and rebuffed the constitutional rights of these Plaintiffs. This Court has given the state one bite at the apple, and the State failed. Only an early, clear, unambiguous and strong judgment accompanied with a clear alternative to be implemented by the State will be sufficient to guarantee these Plaintiffs an efficient system of education and guarantee to the State both the fruits of a generally educated populous and a reputation for fundamental fairness.

II.

STATEMENT OF THE CASE

This case was filed in May 1984 and amended after House Bill 72. On June 1, 1987, the District Court found the Texas School Finance System unconstitutional under the Efficiency Clause of art. VII § 1 and the Equal Protection and Due Process Clauses of the Texas Bill of Rights, art I §§ 3 & 19. The District Court enjoined the State from implementing the school finance system, more specifically from using any funds to support the school finance system. However, the District Court stayed its injunctive decree until September 1, 1989 to allow the state the time to design a constitutional school finance system. The District Court also allowed the state to begin implementation of the constitutional plan as late as September 1, 1990.

In December 1988 the Court of Appeals reversed the District Court. This Court affirmed the District Court opinion and found the Texas School Finance System (the combination of state funding and district tax bases of widely varying ability to raise local funds) unconstitutional under art. VII § 1 of the Texas Constitution. Edgewood v. Kirby, 777 S.W.2d 391 (Tex. 1989).

This Court allowed the Legislature until May 1, 1990 to design a new and constitutional school finance plan, and noted that the Governor had already called a special session of the Legislature to begin November 14, 1989 and that "the school finance problem could be resolved in that session." Edgewood, id. at 399 n.8. The Governor did not heed that advice and finally called a special

session of the Legislature (the Third Called Session of the 71st Legislature - the first school finance session) [1] to commence on February 27, 1990. No school finance legislation was passed during that Third Called Session. A Fourth Called Session of the Legislature began on April 2, 1990 and adjourned May 1, 1990, again without passing a school finance bill.

The District Court held a hearing on May 1, 1990. At that hearing, the State Defendants asked for an extension of the stay of the judgment, and Plaintiffs requested a immediate enforcement of this Court's judgment enjoining funding of the school finance system. The District Court extended the stay of its judgment, (i.e. not enjoining the school finance system) and began the process of appointing a Master in Chancery to devise a possible alternative school finance plan.

A Fifth Called Session of the Legislation convened May 2, 1990 and adjourned May 29, 1990. During that session a school finance bill was passed by both houses of the Legislature but vetoed by the Governor. An attempted override of the veto passed in the Senate, but failed in the House.

On June 1, 1990, the District Court held another hearing. At that hearing the District Court heard and filed the report of the master recommending an alternative school finance plan for the 1990-91 school year, and the District Court further stayed its judgment (i.e. did not enjoin the school finance system).

---

[1] The Second Called Session convened November 14, 1989 and adjourned December 12, 1989.

A Sixth Called Session was convened on June 4, 1990. The Senate passed Senate Bill 1 on June 5, 1990, the House passed it on June 6, 1990 and the Governor signed Senate Bill 1 on June 7, 1990.

Plaintiffs and Plaintiff-Intervenors filed pleadings to declare Senate Bill 1 unconstitutional and enjoin its implementation.

The Plaintiffs sought to enjoin the Senate Bill 1 during the 1990-91 school year and later years and requested the Court to implement the Master's plan for the 1990-91 school year and an alternative plan for the 1991-92 school year. Plaintiff-Intervenors requested a declaration of unconstitutionality, but did not seek injunctive relief for the 1990-91 school year.

Although the District Court had originally scheduled a hearing on Senate Bill 1 on June 25, 1990, this was delayed until July 9, at which time trial commenced regarding (a) the constitutionality of Senate Bill 1, and (b) what action if any the Court should take if Senate Bill 1 were determined to be unconstitutional.

The trial ended on July 26, 1990 and after extensive filings of proposed findings of fact and conclusions of law by all parties, the District Court, Judge F. Scott McCown entered a judgment and opinion on September 24, 1990.

The District Court held Senate Bill 1 unconstitutional under Tex. Const. art. VII § 1, and this Court's opinion in Edgewood v. Kirby, 777 S.W.2d 391 (Tex. 1989). The District Court adjudged that it would consider further motions for relief if the

Legislature did not implement a constitutional school finance plan by September 1, 1991.

Plaintiffs appealed the District Court Judgment on October 11, 1990 filing cost bonds and notice of appeal in the District Court specifying that appeal would be to the Texas Supreme Court. Defendant-Intervenors have subsequently filed cost bonds in the District Court requesting an appeal to the Court of Appeals.

On October 24, 1990, this Court noted probable jurisdiction of the appeal and set it for argument on November 28, 1990.

III.

JURISDICTIONAL STATEMENT

This honorable Court has jurisdiction over this case both under Tex. Gov. Code § 22.001(c) and this Court's authority to review a violation of its mandate, for the following reasons:

1. The District Court has denied an injunction to Plaintiffs based on the constitutionality of a state statute. An appeal is proper under § 22.001(c), Tex. Gov. Code and Tex. Const. art. V § 3(b).

2. This Court has exclusive jurisdiction to construe and enforce its own mandate and a direct appeal to this Court is the only feasible avenue for securing review of the trial court's interpretation of this Court's mandate. Conley v. Anderson, 164 S.W. 985 (Tex. 1913); Bilbo Freight Lines Inc. v. State of Texas, 645 S.W.2d 925 (Tex.App.-Austin 1983, no writ).

IV.

STATEMENT OF FACTS

There are no disputed issues of material fact. The District Court thoroughly summarized the factual background and appellants will supplement that in their appendix. [2]

Nonetheless, Appellants will summarize the record with regard to: (a) the structure of Senate Bill 1, and (b) the continuation, under Senate Bill 1 of tremendous discrepancies in property value per student and the ability to raise funds to support education.

A. The Structure of Senate Bill 1

As found by the District Court, Senate Bill 1 is a maze of interlocking standards, studies, lesser standards, and additional reports to additional committees based on additional studies and recommendations. (Dist. Ct. opinion pp. 6-24).[3] Possibly Senate Bill 1 can best be understood by a set of questions and answers which relate to the findings of the District Court.

Question 1 - Does Senate Bill 1 provide each student enrolled in the public school system substantially equal access to similar revenue per student at similar tax effort.

Answer - No. (Dist. Ct. opinion p. 8)

---

[2] Tab 1 in Appellants appendix is Senate Bill 1, Plaintiffs' Ex. 1. Tab 2 in Appellants appendix is Plaintiffs proposed Findings of Fact and Conclusions of Law.

[3] The complete judgment and opinion of the District Court may be found in the Appendix to Plaintiff-Appellants Jurisdictional Statement and Notice of Appeal.

Explanation - Senate Bill 1 does not even pretend to give equal access to all students in the state. Its professed goal is to give some statistically significant access to 95% of students (excluding the 5% of students in the richest districts). However, it was not designed to and could not do that.

Question 2 - For these "95%" of students, does Senate Bill 1 give equal access to funds at any tax rate?

Answer - No. (Dist. Ct. opinion pp. 16-18)

Explanation - Senate Bill 1 only gives equal access up to certain maximum tax rate to be set by various committees. This maximum is $.91 in 1990-91, below the average for the state. [4]

Question 3 - For the 95% of students up to the tax rate to be set by Senate Bill 1, is there completely equal access to funds?

Answer - No. (Dist. Ct. opinion pp. 9-11)

Explanation - Senate Bill 1 only states a principle that there will not be a "statistically significant relation" between yield of state and local program revenue (not all revenue, just "program" revenue) and local taxable wealth per student. Richer districts (among the 95% of districts) can and will have more revenue at a certain tax rate than poor districts as long as that relationship is not "statistically significant" as determined by various statistical tests decided upon by a committee of state leaders after testimony and studies by statisticians, etc.

---

[4] The average tax rate in 1989-90 was $.95; early figures show an average in 1990-91 of above $1.00, i.e. most districts are above the maximum equalized rate.

Question 4 - Does Senate Bill 1 guarantee equal access to revenue for students within the 95% of students in districts within a system that is "statistically o.k.", up to a set tax rate?

Answer - No. (Dist. Ct. opinion pp. 12-16)

Explanation - Not all revenues are included in the system to be equalized at any level. The level to which equalization is established will be based on Legislative Education Board rules for the calculation of "qualified funding elements necessary to achieve the state funding policy under Section 16.001" § 16.008(a). That policy guarantees only monies that are "necessary, appropriate, and adequate," (Section 16.001(c)(2)), as determined by various committees. The District Court found that "Senate Bill 1 'equalizes' only for 'qualified' funds." (Dist. Ct. opinion p. 12)

Co-curricular and co-curricular activities are specifically excluded as are administrative expenses which are found by a committee not to be necessary to "efficient administration." [5]

Question 5 - Will Senate Bill 1 provide equalized access to facilities?

Answer - No. (Dist. Ct. opinion pp. 22-23)

---

[5] The overall effects of this system are exemplified by Plaintiffs exhibit 34 (in appendix). This exhibit showed revenues available to districts including their full revenues, revenues that might be equalized under one set of circumstances - column 3 and revenues that would be equalized under another set of circumstances - column 4. Specifically, exhibit 34 shows what a committee could come up with as numbers showing "qualified revenues" that are very close to full revenues. On the other hand it shows revenues that a committee could come up with showing qualified revenues that are far below real revenues. The state's main witness, Mr. Moak testified that each one of these set of circumstances would meet the standards of Senate Bill 1. [S.F. 2365-2371]

Explanation - Senate Bill 1 makes no provision for facilities, other than a study of facilities needs.

Question 6 - For students who are within the 95% of districts, and within a system that shows no statistical relationship between wealth and revenue, and after non-included revenues and facilities are excluded, are these students guaranteed this amount of "equal" access?

Answer - No. (Dist. Ct. opinion pp. 7-14)

Explanation - Senate Bill 1 provides no remediation for past or future inequalities, fails to ensure equality, leaves a labyrinth of escape routes and in general, "the Legislature has given itself plenty of room to do nothing." (Dist. Ct. opinion p. 11)

Senate Bill 1 also has these other weaknesses and ambiguities:

a) As found by the District Court there is a cycle of funding in Texas School Finance and Senate Bill 1 "writes history into law."

b) There will be at least a four year gap between the advantages going to richer districts and the state's efforts to bring poor districts up to that level, which has not and will not be reached.

c) Districts would not be entitled to their full "entitlement," but only a phase in of that entitlement over four years. Sec. 1.20(a), Senate Bill 1.

d) Even after the Foundation School Fund Budget Committee determines funding elements for 1993-94, 94-95 they shall provide

CORRECTION

This Document
Has Been Rephotographed
To Assure Legibility.

for appropriate transition for the 1992-93 program, i.e. reduce monies to richer districts less than the reduction otherwise required, and increase monies to poor districts less than the amount otherwise required.

e) Beginning in 1991-92 the Foundation School Fund Budget Committee can calculate rates for the essential elements of Senate Bill 1 "using a percentile property wealth per weighted student that is not less than the 90th percentile." Sec. 16.302(c) (S.F. 2363-2365)

f) Senate Bill 1 provides that the cost of its "exemplary programs" would not be greater than the 95th percentile of state and local revenue and not be less than 95% of the 95th percentile.

g) If the Commissioner and Legislative Education Board do not complete certain studies and set certain numbers, districts could lose up to $1,000 per student because funding would be based on "ADA" rather than weighted students. Sec. 16.302(b). (S.F. 658, 672-676; Px 23)

h) The method of counting students will be changed. This will result in an average 2 1/2% loss of funding to districts (2% maximum loss in 1990-91) § 16.006. (S.F. 658, 666-671)

After a careful review of these limitations the District Court determined that "parts of Senate Bill 1 are so vague as to be no plan at all. Parts of Senate Bill 1 are destined to fail." (Dist. Ct. opinion p. 7)

By far the greatest weaknesses of Senate Bill 1 is that it continues UNEQUALIZED ENRICHMENT. (Px 6, 7; Dist. Ct. opinion

passim)

B. Disparities Among School Districts

The District Court concluded that "Senate Bill 1 does nothing to eliminate the disparities in local wealth." (Dist. Ct. opinion p. 7) "These disparities remain as great as when the court first considered this problem in 1987." Id. "Senate Bill is not the dramatic structural reform that the Supreme Court foresaw would be required." Id. The District Court found that Senate Bill begins "by excluding 174,182 children in districts with total taxable property wealth of about 90 billion dollars, or 15% of the state's total taxable property wealth." (Dist. Ct. opinion p. 8)

The state funding system continues to subsidize inefficiency. (Barnes) Two hundred million dollars a year is squandered on small districts (S.F. 1342) and over $200 million a year is lost to budget balanced (S.F. 2356, Px 35), and under Senate Bill 1, $470 million a year will be lost to the wealthiest 5% (S.F. 2252), while no appropriations go to facilities or to raise the state's low wealth districts toward the national average expenditures.

Senate Bill 1 does not change the property values, ranges of taxes, revenues and values, and educational issues that were considered in the Edgewood v. Kirby opinion. The facts upon which this Court based its Edgewood opinion are the same now as they were at the time of that opinion. Under Senate Bill 1 the state and local percentages of total educational revenues are about the same; the wealthiest district has about 570 times the wealth of the poorest district; the 300,000 students in the lowest wealth

districts have 3% of the state's property and the 300,000 students in the highest wealth districts have 25% of the state's property (Px 101, 102, 103, 104). The range of wealth between districts in the same county, Edgewood and Alamo Heights, Highland Park and Wilmer Hutchins, Deer Park and North Forest, stayed about the same.

As in 1985-86, today the 5% of children in the wealthiest districts live in districts with approximately 15% of the state's wealth while the 5% of children in the poorest districts have about 1% of the state's wealth. The three wealthiest districts in the state with a total of 17 students have as much wealth as the three poorest districts in the state with over 6,000 students. (Px 101)

Senate Bill 1 will not even keep up with inflation. (Dist. Ct. opinion p. 22) For all its sound and fury, Senate Bill 1 will put fewer dollars and a lower percentage increase of dollars into school finance than did House Bill 72 in 1984. The students in the top 5% of districts (that is 5% of students who live in the wealthiest districts) still live in districts that can raise an average of $65 for every penny tax rate and the 5% of students in the poorest districts can raise only $4 per penny tax rate. Though the system is funded at a slightly higher level, the perfect inequities between richer and poorer districts still inflict the system.

The Plaintiffs and Plaintiff-Intervenors produced evidence on the effects of Senate Bill 1 on all districts in the state at their present tax rates, at the $.91 tax rate which would maximize state funding, at the $1.18 tax rate which is the goal the state

predicted for Senate Bill 1 in 1994-95 and at the $1.70 rate which the Plaintiff district North Forest ISD is maintaining. Under each of those scenarios the same inequalities and disparities appear.

The critical problem is that in 1990-91 the system was not efficient and for future years there was no "plan."

V.

ARGUMENT

Points of Error Restated

1. As a matter of law, the District Court erred in refusing to enjoin Senate Bill 1 during the 1990-91 school year. (Dist. Ct. opinion pp. 1-3)

2. As a matter of law, the District Court erred in refusing to enjoin Senate Bill 1 for the 1991-92 and later school years by entering an injunction appropriate to the violation found. (Dist. Ct. opinion pp. 1-3)

3. The District Court erred in modifying this Court's mandate inconsistent with this Court's opinion. (Dist. Ct. opinion pp. 1-3)

A. The District Court Judgment Gives Plaintiffs No Real Remedy for the Violation of Plaintiffs' Constitutional Rights

The proceedings in the District Court after this Court's October 2, 1989 decision prove the necessity for a strong injunctive decree with an early deadline and a school finance plan that will be implemented in 1991-92 (unless the State enacts a constitutional plan).

The District Court's Judgment will only be effective if it is enforceable by April 1st of the year.

Following is a chronology of the steps taken in the District Court to enforce this Court's mandate, the errors made and the reasons for the need to design a better procedure.

The District Court held a hearing in May 1, 1990, the "effective" date of this Court's mandate. [6] Under this Court's mandate, all funding of public schools should have ceased on that date because no constitutional plan (indeed no plan) had been passed by May 1, 1990.

On May 1, the State requested more time to come up with a plan and the District Court granted that request. The District Court did begin the process of developing a plan by a Master in Chancery.

At the May 1st hearing, the associations representing public school employees sought to intervene, arguing that their contract rights would be illegally compromised by any action to enforce this Court's mandate. The State made emotional pleas to preserve the public schools in Texas. The District Court, under incredible pressure and sensitive to the arguments made by the employees and the state, delayed this Court's mandate until June 1, 1990. That was error, but error "capable of repetition but evading review."

---

[6] The statement of facts of this May 1, 1990 hearing has been prepared and forwarded to this Court as part of the transcript.

At the June 1, 1990 hearing, the State again requested additional time. [7] The State argued there would be chaos if funds were cut-off. Again, the employees' unions urged that their contracts should not be in anyway prejudiced. [8]

The District Court again delayed the implementation of this Court's mandate and gave the State additional time. That was error, but again error "capable of repetition, but evading review." However, the District Court did allow the Master's plan to be filed and indicated its intention that the Master's plan might be considered as an alternative school finance plan for implementation of the 1990-91 school year if the Legislature did not devise its own plan. Finally on June 4, the Governor and the leaders of the Senate and House agreed on a plan which was rapidly passed by the Senate and the House and then signed by the Governor.

The lesson to be learned from this process is that unless an alternative plan is extant and already approved by the Court, the Court's judgment is not weighed heavily in the Legislature's and Governor's deliberations. In other words, the power rather than the words of the Court are respected by the Legislature and Governor.

If the Legislature had not been able to produce its school finance plan it is unlikely that the District Court would have

---

[7] The statement of facts of this June 1, 1990 hearing has been prepared and forwarded to this Court as part of the transcript.

[8] By May 1 or June 1 most teachers' contracts are signed for the following school year and most district budgeting procedures have been completed.

implemented the Master's plan because of the Master's plan's significant changes in state funding to school districts that had already budgeted based upon the existing school finance legislation. (S.B. 1019 as passed in the 71st Legislature in June 1989 and in effect for the 1989-90 and 1990-91 school years.)

If the Legislature fails to take action by June 1 of an odd numbered year (the normal date on which the Legislature completes its budget and school finance plans), there will be insufficient time for the District Court to have hearings on that plan and implement a constitutional plan.

This delay forces Plaintiffs and the District Court (or this Court) into a no-win situation. Even a June 1, 1991 plan (and absolutely a September 1, 1991 plan) will put the Legislature and Governor (whatever their relationship) in a position of unilateral control, because it will be much too late to review their product ((a) hearings on constitutionality, (b) if unconstitutional hearings on plan (or use of a master), (c) order a plan, (d) appeals by State). The State will be able to tell the poor districts and their representatives "EITHER OUR PLAN OR NO PLAN."

Were it not for the history of neglect documented in this case, [9] this would seem to be a normal political process. However, the product of this process has been found unconstitutional by this Court and the newest product, Senate Bill 1, has been declared

---

[9] The preamble to the Gilmer-[illegible]1 in 1949 noted the inefficiencies of school district li[illegible] the failure t[illegible] fund facilities, as did commissioners in th[illegible]'s and 1960's (Hooker, Barnes testimony)

unconstitutional and a violation of this Court's opinion. The subject matter is education - "essential to the preservation of the liberties and rights of the people." Tex. Const. art. VII § 1. The District Court judgment prejudices Plaintiffs, the winners whose constitutional rights have been denied, and rewards the State, the insidious wrongdoer.

B. The District Court Judgment Violates the Principles of This Court's Edgewood v. Kirby Opinion

This Court held that the meaning of "efficiency":

> is not an area in which the Constitution vests exclusive discretion in the legislature; rather the language of art. VII § 1 imposes on the legislature an affirmative duty to establish and provide for the public free schools.

Edgewood, 777 S.W.2d at 394.

This Court then made its point even clearer holding that:

> [t]his duty is not committed unconditionally to the legislature's discretion, but instead is accompanied by standards. By express constitutional mandate, the legislature must make "suitable" provision for an "efficient" system for the "essential" purpose of a "general diffusion of knowledge."

Id.

Edgewood examines the contours of Tex. Const. art. VII § 1 and art. VII § 3 in light of their language, history, and application to the present educational system. This Court has already given the Legislature broad outlines of a proper school finance plan. Unfortunately, the Legislature, as found by the District Court, has not met its obligations. This Court told the legislature that:

1. "More money allocated under the present system would reduce some of the existing disparities between districts, but it would at best only postpone the reform that is necessary to make the system efficient." Edgewood, 777 S.W.2d at 397.

2. "A band aid will not suffice; the system itself must be changed." Id.

3. "There must be a direct and close correlation between a districts tax efforts and the educational resources available to it." Id.

4. "[D]istricts must have substantially equal access to similar revenues per pupil at similar levels of tax effort." Id.

5. "Children who live in poor districts and children who live in rich districts must be afforded a substantially equal opportunity to have access to educational funds." Id.

6. "In setting appropriations, the legislature must establish priorities according to constitutional mandate; equalizing educational opportunity cannot be relegated to an 'if funds are left over basis.'" Id.

The Court concluded:

> We do not now instruct the legislature as to the specifics of the legislation it should enact; nor do we order it to raise taxes. The legislature has primary responsibility to decide how best to achieve an efficient system. [emphasis added]

Edgewood, 777 S.W.2d at 399.

And as a final word,

> Let there be no misunderstanding. A remedy is long overdue. The legislature must take immediate action.

Id.

This Court has already affirmed the power of the District Court to cut off all funds spent on public schools until a constitutional plan is implemented.

The District Court also had the power to enforce a plan to protect the rights of the Plaintiffs, especially after the Legislature had failed to meet its obligations to devise and implement a constitutional plan.

C. The District Court Had the Power to Issue the Injunctive Relief Requested by Plaintiffs and the District Court Erred in Not Doing So

Texas courts have both inherent and implied judicial powers. Eichelberger v. Eichelberger, 582 S.W.2d 395 (Tex. 1979); Mays v. Fifth Court of Appeals, 755 S.W.2d 78 (Tex. 1988) (Justice Spears, joined by four Justices concurring). Texas courts exercise inherent powers to change, set aside or otherwise control their judgments. Eichelberger, id. at 398, n.1. Further, Texas courts have implied powers. Implied powers are those which can and ought to be implied from an expressed grant of power.

In this case the District Court had an express grant of power to determine the constitutionality of Senate Bill 1. Indeed this express grant of power was affirmed and elucidated by this Court. The District Court clearly had both the inherent power to protect and enforce its judgment and the implied power to force the Legislature to follow a certain course of action after repeated failures of the Legislature to meet its constitutional duties. To follow the procedure recommended by the Plaintiffs, i.e. to

implement a plan while maintaining the Legislature's authority to substitute a plan of equal equity, is a reasonable and deferential use of a court's power in relationship to the legislature.

This Court has recognized the inherent power of the court to preserve its efficient functioning. As Justice Spears held in Mays:

> this inherent power of the courts is necessary not only to preserve the judicial branch of government, but also to preserve for the people their security and freedom. The judicial power provides a check on the abuse of authority by other governmental branches. If the courts are to provide that check, they cannot be subservient to the other branches of government but must ferociously shield their ability to judge independently and fairly. (emphasis in original)

Mays, 755 S.W.2d at 80. (Justice Spears concurring)

Mays dealt with the power of a court to require a legislative body to fund the essential requirements of running the court. Nevertheless this Court has certainly recognized its equality among the three branches of state government, because:

> [t]he inherent power of the courts to compel funding thus arises out of principles and doctrines that are so thoroughly embedded as to form the very foundation of our governmental structure. The judiciary may often be denominated as the "third" branch of government, but that does not mean it is third in importance; it is in reality one of three equal branches. As such, the judiciary is an integral part of our government and cannot be impeded in its function by legislative intransigence in funding.

Mays, 755 S.W.2d at 80. (Justice Spears concurring)

In this case the power of the judiciary is being eroded by the failure of the Legislature to respond to a Supreme Court opinion. Apparently the Legislature assumes that the ultimate cessation of funding will not occur and therefore that it can safely ignore the rulings of this Court with impunity. The procedure recommended by Plaintiffs, See pp. 27-28, infra, is a method of maintaining the Court's powers to enforce its judgment while at the same time deferring to the Legislature as long as the Legislature meets the demands of the Constitution. This is consistent with the separation of powers doctrine of Tex. Const. art. II § 1.

D. The District Court's Judgment Weakens This Court's Mandate; and the District Court Did Not Have the Power To Do So

The Judgment in this case is the Supreme Court's mandate which adopted the District Court's June 1, 1987 judgment with modifications. The District Court had no jurisdiction to weaken it. Conley v. Anderson, 164 S.W. 985 (Tex. 1913); Bilbo Freight Lines, Inc. v. State of Texas, 645 S.W.2d 925 (Tex.App.-Austin 1983, no writ).

This Court affirmed the June 1, 1987 District Court judgment with two modifications:

1. It delayed the required date of passing a plan from September 1, 1989 to May 1, 1990.

2. It added the "substantially similar" language.

However, this court's mandate did not change the operative section of the District Court judgment - that funding would not be

allowed under an unconstitutional plan. [10]

Even an order by the District Court implementing a certain plan would not be as forceful a remedy as that remedy already approved by this Court.

Other Courts that have ordered constitutional school finance plans to be implemented and had the legislature fail to abide by the order of the court, have gone through a process of requiring a plan, reviewing the plan, and ordering a plan, and only then requiring the cessation of all funds for failure of the legislature to comply with Court orders.

After continued recalcitrance by the legislature, the New Jersey Supreme Court implemented and ordered the state to fund a plan drawn up under a previous Court order. Robinson v. Cahill, 355 A.2d 129 (N.J. 1976); and Robinson v. Cahill, 358 A.2d 457 (N.J. 1976).

The Washington Supreme Court thoroughly reviewed the power of courts to control the school finance system of their respective states relying heavily upon federal precedent. It generally concluded that, while each branch of government must respect each other branch, each must be aware of the powers of the other branches. Ultimately, it is the power of the judiciary to determine when one branch invades the province of another. Seattle

---

[10] The parties disagree whether the July 1, 1987 District Court's judgment applied only to the cessation of state funds or to the cessation of "local" funds as well as state funds. This matter was briefed by the Plaintiffs in Plaintiffs Memorandum in Support of Their Motions Concerning "Local Funds" and in Response to Proposed Injunctive Order - May 10, 1990.

School Districts Number 1 of King County v. State, 585 P.2d 71 (Wash. 1978) (en banc).

In California, in Serrano v. Priest, 557 P.2d 929, 940 (Cal. 1977) the District Court ordered and the California Supreme Court affirmed a school finance plan which required the expenditures of all districts to be within a very small range (approximately within $100 of a mean).

Plaintiffs hope that the Legislature does not force the Texas courts into such critical power struggles. The recommended plan would not do so, because it only requires the Legislature to come up with a plan of equal equity to the plan ordered by the District Court rather than limiting the discretion of the Legislature to only one plan.

The District Court abused its discretion. This Court has ordered that no funds will be spent under an unconstitutional system. ("Defendants are hereby enjoined from distributing any money under the current Texas School Financing System," June 1, 1987 Judgment at 7).

There is no constitutional school finance system extant. Nevertheless, the District Court not only is allowing Defendants to distribute money under an unconstitutional system, it set a compliance date so late and gave so little direction to the Legislature so as almost to guarantee the continuation of that system through the 1991-92 year.

This abuse of discretion by the District Court is particularly unfortunate because the District Court put upon the Plaintiffs the

burden of showing the unconstitutionality of the new statute, rather than putting the burden of the state to show "changed circumstances" which would enable the state to escape the power of the District Court injunctions. [11] Humble Oil v. Fisher, 253 S.W.2d 656 (Tex. 1952)

B. Federal Precedent and the Law of Injunctions, and a Recommended Procedure

The District Court found that the School Financing System under Senate Bill 1 was still unconstitutional and pointed to numerous constitutional flaws with the Senate Bill 1 approach. Nonetheless, out of deference to the role of the legislature, the court refused to enter any injunctive relief to correct the unconstitutional condition but rather stated that it "has more hope for the leadership and ability of the next Governor and the 72d Legislature." (Dist. Ct. opinion p. 26)

While there is surely a time for judicial deference, and a legislature or local governing body will always be accorded a first chance to rectify an unconstitutional condition within its sphere of authority, it is equally certain that it lies within the power of a district court to act affirmatively to effectuate its own orders. That the judicial branch does possess such authority, even when the issue of Federal-State comity is raised, has been repeatedly reaffirmed by the United States Supreme Court.

---

[11] The issue of burden of proof in this litigation was briefed by the Plaintiffs in Plaintiffs' Pre Trial Memorandum on Issue of Burden of Proof, July 6, 1990.

In Swann v. Charlotte - Mecklenburg Board of Education, 402 U.S. 1, 16-17, 91 S.Ct. 1267, 1276 (1971), the Supreme Court described the injunctive powers of a trial court confronted with an unconstitutional practice and a public entity which does not offer a proper remedy:

> If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.
>
> ...
>
> [A] school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right. The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution.
>
> ...
>
> As with any equity case, the nature of the violation determines the scope of the remedy. In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system.

And, more closely analogous to the instant situation, the authority of a federal district court extends even to the power over the levy of state taxes to vindicate constitutional rights.

> ...a court order directing a local government body to levy its own taxes is plainly a judicial act within the power of federal court.

Missouri v. Jenkins, 110 S.Ct. 1651, 1665 (1990).

Jenkins concerned the authority of the federal court to set a tax levy in aid of the desegregation of the Kansas City schools. Although the defendant school district wished to levy the tax rate necessary it was prevented from doing so by other provisions of state law. The Supreme Court felt that the district court's order went too far and that, rather than itself impose the tax increase, the district court should have "required (the school district) to levy property taxes at a rate adequate to fund the desegregation remedy and could have enjoined the operation of state laws that would have prevented KCMSD from exercising this power." Missouri v. Jenkins, 110 S.Ct. at 1662.

Nor did the Supreme Court limit the authority of a district court to order a local body to levy adequate taxes to the situation of school desegregation. Rather the court grounded its holding on:

> a long and venerable line of cases in which this Court held that federal courts could issue the writ of mandamus to compel local governmental bodies to levy taxes adequate to satisfy their debt obligations.

Missouri v. Jenkins, id. at 1665.

As applied to the instant case Jenkins and the cases cited are authority for the proposition that the district court has the power and duty to compel the Legislature to take those steps necessary to correct the constitutional deficiencies of the current system by implementing a school finance plan which would meet the specifics of the court's finding of what constitutes a "suitable" and "efficient" system. The court should have specified in dollar, school district and student terms the outlines of a

constitutionally acceptable plan and entered an injunction requiring that the Legislature enact provisions designed to assure the constitutional result.

Plaintiffs recommend the procedure approved by the Supreme Court in Reynolds v. Sims, 377 U.S. 533, 586, 84 S.Ct. 1362, 1394 (1964).

> We feel that the District Court in this case acted in a most proper and commendable manner. It initially acted wisely in declining to stay the impending primary election in Alabama, and properly refrained from acting further until the Alabama Legislature had been given an opportunity to remedy the admitted discrepancies in the State's legislative apportionment scheme, while initially stating some of its views to provide guidelines for legislative action. And it correctly recognized that legislative reapportionment is primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so. Additionally, the court below acted with proper judicial restraint, after the Alabama Legislature had failed to act effectively in remedying the constitutional deficiencies in the State's legislative apportionment scheme, in ordering its own temporary reapportionment plan into effect, at a time sufficiently early to permit the holding of elections pursuant to that plan without great difficulty, and in prescribing a plan admittedly provisional in purpose so as not to usurp the primary responsibility for reapportionment which rests with the legislature.

Plaintiffs are aware of the difference between federal and state cases. Federal courts are armed with the Supremacy Clause. However, federal courts are limited by the 10th Amendment, well

defined principles of federal-state comity, the interaction of two different constitutions and sets of laws, and the appointment and life-tenure of its judges.

The state courts do not have these limitations, Tex. Const. art. II § 1 notwithstanding.

The different types of injunctions have been well described by Prof. Ewlyn Fiss in his book entitled The Civil Rights Injunction (1978). He describes the resurgence of the writ of injunction after Brown v. Board of Education, 349 U.S. 294, 75 S.Ct. 753 (1955) [12]. Injunctions had been relegated to a low level

---

[12] The State of Texas filed a brief in the Brown v. Board of Education case which argued:

> This Court is authorized to permit an effective gradual adjustment toward integration and, unquestionably, the administration of this program in Texas must be left to the local school districts.
>
> A gradual transition to an integrated public school system is not a denial of relief of the constitutional rights enunciated by the court. The court has previously permitted a transition period in analogous situations, particularly in the antitrust and nuisance cases. (citations omitted)
>
> This Court should remand to the courts of first instance with directions to frame decrees in these cases implementing the principles enunciated in the Court's opinion of May 17, 1954.
>
> They could recognize and adjust the equities between the parties, bringing individual rights into equality without unduly hindering the public school program.
>
> Any decree or decrees entered by the Court should protect the democratic and salutary principle of local self-government inherent in

of use because of their misuse in the labor injunction cases, e.g. the Debs cases.

Prof. Fiss sees the present use of injunctions to force recalcitrant defendants to take affirmative steps to remedy past unconstitutional practices as a positive use of an injunction.

He also criticizes the normal description of injunctions as either mandatory or prohibitory and suggests a structure of three new categories more accurately to describe the use of injunctions:

1. The preventive injunction which seeks to prohibit some discrete act or series of acts from occurring in the future.

2. The reparative injunction that compels the Defendant to engage in a course of action that seeks to correct the effects of past wrongs.

3. The structural injunction, which seeks to effectuate the reorganization of an ongoing social institution.

> our public school systems. In this manner the decrees could appropriately be implemented by the local school authorities as a legislative and administrative manner. (citations omitted)

99 L.ed at 1101-1102.

Similar arguments have been made throughout this litigation.

Of course, in Brown v. Board of Education, 349 U.S. 298 (1954) the Supreme Court required a "prompt and reasonable start toward full compliance" and held that "[t]he burden rests upon the Defendants to establish that such time [for any delay] is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date." Brown, 349 U.S. at 300.

Fiss, id. at 7.

Professor Fiss describes the history of the use of injunctions after the Brown case. At first courts issued only general decrees that certain practices were illegal and that a public body had to come forward with a new constitutional plan. This was based on the doctrine of comity and a desire to capitalize on the expertise of the school board. As noted by Prof. Fiss,

> This made imminent sense, but courts soon saw the obvious - that the generalized decrees would not effectively change the status quo. The same dynamics that led to the violation in the first place would prevent the Defendant from using its knowledge and imagination against itself, from tying its own hands too effectively or too stringently.

This lack of response by school boards forced the courts to enter detailed injunctions setting forth specific school desegregation plans. [13]

Professor Fiss also draws a distinction between the general preference for legislative solutions rather than judicial solutions in common cases and those cases in which the civil rights of minority plaintiff groups are involved.

He points out that:

> if the focus shifts to the civil rights injunction, either the minority group orientation or the constitutional basis of the substantive rights, then the non representative quality of the judiciary becomes a virtue rather than a vice. Constitutional rights are supposed to be counter majoritarian, and those emanating from

---

[13] Plaintiffs attorney attended completely segregated schools in Texas in 1954-1965; he also taught in a Mississippi school district in 1970-71 that was fully segregated until 1969-70.

> the equal protection clause are particularly so.

Fiss, id. at 60.

Professor Fiss states that arguments against the use of the injunction do not apply to the civil rights constitutional law context to the same extent as they do to other contexts. He describes the history of the Civil Rights injunction pointing out the doctrine of "minority rights." He noted that:

> the blacks were able to give that doctrine a different and truer meaning. They were able to point to certain factors - not just their number, but also the insularity and economic weakness, that deprive the elective process of its presumption of legitimacy and transfer that legitimacy from the Legislature [or other representative bodies] to the judiciary.

Fiss, id. at 89-90.

In his exhaustive article, Frug, The Judicial Power of the Purse, 126 U. Penn. L.R. 715 (1978) Prof. Frug argues that the implementation of an alternative plan by a court is less upsetting to the process of local decision making that would be a prohibitory injunction. He points out that by adopting its own plan,

> the court avoids direct confrontation with Legislative power and even allows the Legislature to delay indefinitely enactment of its plan. However undesirable it is to the Legislature to have to run in Court designed districts, this option may seem preferable to devising a solution themselves.

Prof. Frug sees the implementation of a decree by the court as preferable to closing down the prisons or more applicable to this case, cutting off all funding to schools. 126 U.Penn. L.R. at 768.

F. Plaintiffs Request That This Court Order the District Court to Implement the Uribe/Luna Plan as a Practicable and Just Alternative and the Only Method to Assure Protection of Plaintiffs Rights in the 1991-92 School Year

Plaintiffs requested that the District Court implement the Uribe/Luna Plan while giving the Legislature the opportunity to design and implement a plan of equal equity. If the legislature designs such a plan the legislative plan, would be implemented. [14]

Such a procedure would put before the Legislature a clear standard of equity, and assure the Plaintiffs, the children in low wealth district, a real remedy for the 1991-92 school year.

Plaintiffs plan achieves an equitable system for 100% of students in the state, but does allow approximately 1/2% to 1% of students to be in districts which would obtain revenues at lower tax rates than for the other 99% of students in the state. (S.F. 708-709, 2383)

The Uribe/Luna plan does change the structure of school finance; it is not a band aid. Mr. Moak, the representative of the state in this litigation, noted that the State Board of Education Finance Committee and he proposed a variation of the Uribe/Luna plan, testified before the Court that it is a more equitable plan than the state's plan, and testified that he would recommend it again but for certain constitutional problems he perceived. (S.F.

---

[14] The range of remedies in this case have been discussed at least since 1970. Coons, Clune & Sugarman, Private Wealth and Public Education (1970) The issue of tax base reorganization has been in Texas school literature since the 1930's WPA report and the 1949 Gilmer Akins Act and the 1967 Connally Commission Report.

2383, 2390, 2391) [15]

The point is, however, that implementation of such a plan by the District Court would inform the Legislature of the results of its inactivity and failure to deal with the necessary changes in the school finance structure, and would at the same time guarantee the prevailing Plaintiffs real relief.

The Plaintiffs did not and do not argue that the Uribe/Luna plan was the only plan which would meet the mandate of this Court. Indeed a wide variety of constitutional plans could be implemented. However, the Plaintiffs did offer the Uribe/Luna plan to the District Court so that the District Court could consider and implement a constitutional plan while at the same time giving the legislature the option to come forward with a plan of equal equality. The Uribe/Luna Plan was drafted by the Legislative Council [16] and filed in the third, fourth and fifth special sessions.

Significant testimony explaining the Uribe/Luna plan was also offered to the District Court through Dr. Albert Cortez and Dr. Jose Cardenas, and a description of the plan was admitted into evidence (Px 17 - in appendix). In addition, Texas Education

---

[15] Later section of this brief will discuss that plan and the "constitutional problems" in more detail.

[16] The drafting of the bill by Legislative Council does not guarantee its constitutionality. Nevertheless, the drafting of the bill by the Legislative Council does show the judgment of that agency has determined that the bill fits within the basic structures of Texas statutes.

Agency printouts showing the impact of the Uribe/Luna plan on every school district in the state were admitted into evidence. (Px 29)

The Uribe/Luna plan, as filed in the Legislature, would have cost no more than Senate Bill 1 in 1990-91. (Px 28, Fiscal Note)

How the Plan Works

The plan works by creating county tax bases. Each county tax base would generate revenue from all school districts within the county at the rate set by the Legislature. These monies would be supplemented by monies from the state that would be sent to the county based on the county's student needs and wealth. [17]

The Uribe/Luna plan would allow districts to enrich above the county level, but that enrichment would be equalized, i.e. accessible to any district at the same tax rate. Districts would be allowed to tax above the county tax rate on their own initiative up to a certain set level. For example under the Uribe/Luna bill each district in Dallas county would tax at the $.80 rate. This money would then be combined with state money to Dallas county giving every district in Dallas county the same revenue per weighted student. Each district could tax above that $.80 level up to a certain maximum as set by the statute. This would give districts in Dallas county the same revenue per weighted student at the same tax rate. (except for the extremely wealthy budget-balanced districts in Dallas county which would have the same

---

[17] In other words, under this plan the county would receive funding as the districts do now, i.e. in terms of their numbers of students, types of students, district characteristics and their wealth.

revenues as other districts in the county at a slightly lower tax rate). By raising the tax rate in the Highland Park district from its present approximately $.50 up to $.80 about 13 million additional dollars of money would be generated. This exhibits the waste in the present system. This would allow the state to use this 13 million dollars either to increase the overall level of the state program, or to save the state money. The sharing of the tax base would "save" the state of Texas 82 million in annual equalization cost in Dallas county alone, and approximately $300 million a year from the state. (Px, p. 6) But most important, it would create equal access to education funds for all Texas school children. (Px 17, p. 6)

G. Texas Constitutional Law and Case Law Support the Creation of County Wide Taxing Jurisdiction

The District Court was concerned about the constitutionality of the tax base consolidation plan. Plaintiffs have briefed this issue before the District Court in Plaintiffs Response to Defendants First Post Trial Submission, August 27, 1990, pp 16-22. The following is a summary of the law supporting the use of county tax bases to equalize and make the finance system more efficient.

School districts are creatures of the state.

> They [school districts] are state agencies, erected and employed for the purpose of administering the state's system of public schools... Generally it must be said that the Legislature may from time to time, at its discretion, abolish school districts or enlarge or diminish their boundaries, or increase or modify or abrogate their powers.

Love v. Dallas, 40 S.W.2d 20, 26 (Tex. 1931).

The ownership of such property is in the hands of the local district or municipality for the benefit of the public. The Legislature may control or dispose of the property without the consent of the local bodies, so long as it does not apply it in contravention of the trust. Love v. City of Dallas, 40 S.W.2d at 27.

The Legislature has the authority to define or redefine school districts as part of its constitutional authority under Tex. Const. art. VII § 1 and art. VII § 3. In North Common School District v. Live Oak County Board, 199 S.W.2d 764 (Tex. 1946), this Court held that:

> generally the Legislature has authority to enlarge or consolidate school districts in such manner as it deems fit. [citing Love].

The cases most clearly on supporting the creation of county wide taxing jurisdiction are the Edgewood v. Kirby case itself and Watson v. Sabine Royalty Corporation, 120 S.W.2d 938 (Tex. Civ. App.- Texarkana 1938, writ ref'd). The Watson Court specifically upheld the creation of county wide equalization school districts noting that "the act had as its purpose to equalize the educational opportunities of school children." The county school district in the Watson case was established to "equalize" tax levies after oil was discovered in one part of the county.

Indeed the most important support for the idea of county-wide taxing authorities is the Edgewood v. Kirby decision itself. This Court in Edgewood concluded that art. VII § 3 was "an effort to make schools more efficient and cannot be used as an excuse to

avoid efficiency," Edgewood v. Kirby, 777 S.W.2d at 397. Further this Court in Edgewood put the responsibility to provide for an efficient and equitable school system squarely on the Legislature stating that the Legislature could use school districts to meet the Legislature's obligations:

> Whether the Legislature acts directly or enlists local government to help meet its obligation, the end product must still be what the Constitution commands -- i.e. an efficient system of public free schools throughout the state.

Edgewood v. Kirby, 777 S.W.2d at 398.

H. The Texas Constitution Itself, Article VII §3 Does Not Support the Allegation that Creation of Such County Tax Districts Would Require Elections in Every County

Tex. Const. VII § 3, and Tex. Const. art. VII § 3(b) do not require elections to create county taxing districts.

Edgewood noted the primacy of art. VII § 1 as the standard for school finance in Texas. Art. VII § 3 in effect allowed the Legislature a free hand at meeting the Legislature's obligations to fund public schools through the use of school districts. Art. VII § 3 is an extremely complex section of the Texas Constitution.

Art. VII § 3 states in pertinent part:

> and the Legislature may also provide for the formation of school district [sic!] by general laws; and all such school districts may embrace parts of two or more counties, and the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public or schools of such districts, (emphasis added)

Tex. Const. art. VII § 3 goes on to say:

> ...and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of schools buildings therein; provided that the majority of the qualified property tax paying voters of the district voting at an election to be held for that purpose shall vote such tax. . .

Thus, the Constitution allows the Legislature two ways to create school districts and to "pass laws for the assessment and collection of taxes" in said districts. Under the first clause no election is required. Under the second clause, county districts could be created though there is at least a question whether an election would be required.

The difference between the first clause and second clause of art. VII § 3 is highlighted by a look at the history of Article VII §3. Specifically after the 1909 amendment to Article VII §3 the second clause was a separate sentence from the first clause. Specifically the second clause began:

> And the legislature <u>may</u> authorize an ad valorem tax ... (emphasis added) art. VII § 3, 1909 amendment.

In later versions apparently to avoid starting a sentence with "and," or to somehow seek to unify art. VII § 3, the different sentence became a separate clause rather than a separate sentence. Nevertheless it is clear that the section which talked about authorizing "an additional ad valorem tax based on the vote of the people" was a separate concept from the allocation of the responsibility to the Legislature, "the Legislature shall be

authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public schools of such districts. . ." Tex. Cont. art. VII § 3.

This difference between the first and second clause of art. VII § 3 supports the Legislature's authority to create taxing districts without the necessity of an election. Indeed the Legislature would have the authority to do this even if it were not to meet its overall obligation under Tex. Const. art. VII § 1 and the Edgewood v. Kirby decision. However, should the Legislature implement a county tax base system to meet its obligations under art. VII § 1 and Edgewood v. Kirby, the authority of the Legislature to create such districts without an election would be clear.

The original intent of Article VII, Section 1 and Article VII, Section 3 of the Texas Constitution have recently been extensively analyzed in an insightful law review article. Watts & Rockwell, The Original Intent of the Education Article of the Texas Constitution, 21 St. Mary's L.R. 771 (1990). Mr. Watts and Mr. Rockwell concluded that: "the amendments [art. VII § 3] were not intended to negate the efficiency mandate of section 1, but to equalize the finance structure and provide a supplemental source of revenue to enable the mandate of section 1 to be fully honored." The Original Intent, 21 St. Mary's L. R. at 809. Those authors concluded that:

> they [the framers of the Texas constitution] sought to address inequalities in educational opportunity by forcing the wealthy to pay their fair share of taxes so that the children

of the poorer Texans could avail themselves of their constitutional right to an education.

The authors also concluded that the allowance of local taxation in 1883 in art. VII § 3 did not contemplate the significant concentrations of property wealth currently existing in Texas. The Original Intent, 21 St. Mary's L.R. at 817. Watts and Rockewell quoted the criticism by one of the original framers of the Texas Constitution, Thomas Nugent, of the legislature's increasing reliance on local funds to fund the schools as follows:

> [T]he principle of moderate state taxation for school purposes, it is plain to see, is threatened with destruction. Even the governor perceives the 'idea of paternalism' involved in this method of providing for public instruction, and, in his message to the late special session of the legislature, expresses it as his 'own view,' that the state 'will finally be compelled to content itself with the preservation, collection and distribution of the annual income derived from its permanent fund among the several counties according to scholastic population, and leave to the counties and smaller subdivisions the entire matter of school regulation and maintenance by local taxation.' Whereupon, I have no doubt, that every bank president and railroad magnate in this state, and every non-resident landholder silently but fervently ejaculated, amen! (emphasis added)

Nugent, Judge T. L. Nugent Declines, in The Life Work of Thomas Nugent 279, 283 (C. Nugent, Ed. 1896) as quoted in Intent of Education Article, id. at 819.

I. The District Court Incorrectly Applied the Burden of Proof to Plaintiffs Rather Than Defendants

The District Court specifically placed upon Plaintiffs the burden of proving the unconstitutionality of Senate Bill 1 "in

other words the court placed a heavy burden of persuasion of Plaintiffs. In addition, the court attempted at each juncture to construe Senate Bill 1 so as to make the financing system constitutional." This greatly strengthens Plaintiffs position at this stage of the litigation. Plaintiffs have met this very heavy burden and have prevailed at the District Court level.

This error is important because of the procedure to be followed in later stages of this litigation when the burden should be on the state to show it has met the obligations of this Court's mandate. This Court's mandate required certain actions to occur unless a constitutional plan is implemented. The State of Texas had the burden to show that there had been "changed circumstances" which would "release them" from the injunctive power of this Court. Humble Oil v. Fisher, 253 S.w.2d 656 (Tex. 1952), Tex.Civ.Prac. & Rem. Code § 37.011. Specifically, the State should have come to the District Court to show that it had met the obligations enunciated by this Court, present its plan to the District Court and present arguments and data to support its compliance with the Supreme Court mandate. Under the structure set up by the District Court, the State could pass a plan and make its own unilateral determination of compliance with this Court's mandate and proceed with the plan with no judicial determination that it met its responsibilities.

Under the Texas Declaratory Judgment Act and general law of judgments, the burden is on the person seeking a change in the status of a judgment to show that the change is necessary and

proper. Humble Oil v. Fisher, 253 S.W.2d 656 (Tex. 1952); Tex. Civ.Prac. & Rem. Code §37.011.

Point of Error Restated

4. As a matter of law, the District Court erred in failing to award Plaintiffs attorneys' fees for reasonable and necessary fees and expenses undertaken in representing Plaintiffs before the date of the passage of Senate Bill 1. (Dist. Ct. opinion p. 6)

J. The District Court Erred As a Matter of Law When It Refused to Grant Plaintiffs Their Attorneys Fees for Time Reasonably Expended on This Case Before the Date of the Passage of Senate Bill 1

The District Court specifically found that the fees for work before the legislature were "reasonable and necessary"; further the District Court found that the work performed in resisting the state's efforts to delay the effective date of this court's mandate were also "reasonable and necessary." The District Court also found that "Plaintiffs have been the model of responsible litigants." (opinion p. 47)

The District Court held that the Declaratory Judgment Act attorneys fees provision, Tex. Civ.Proc. & Rem. Code § 37.009 applies only to "proceedings" and would not apply to the time spent by Plaintiffs from the rendition of this Court's opinion in October 1989 up through the passage of Senate Bill 1 on June 7, 1990. Plaintiffs entered their time records for their attorneys and attorney for Plaintiffs testified before the court that he represented his clients after the Supreme Court ruling before the Legislature in monitoring activities of the Legislature, testifying

on the meaning of the Supreme Court case before the legislature, preparing to challenge the Legislature's action, should the Legislature pass an unconstitutional plan (which they did). He also resisted efforts of the State to delay enforcement of this Court's mandate. The interpretation by the District Court of the term "proceedings" is inconsistent with the rules in the federal courts which specifically allows attorneys to obtain attorneys fees for time spent under two circumstances both of which are relevant in this case:

1. Time spent in monitoring compliance with a court's order which they have obtained through litigation.

2. Time spent preparing for litigation even before the "actionable" action is taken by the Defendant party.

In this case Plaintiffs actively pursued their rights after the rendition of this Court's mandate, to protect that mandate. In addition, the work performed was relevant to the preparation for the trial of this case. More specifically, Plaintiffs' attorneys spent significant time in preparing for the hearings on May 1, 1990 and June 1, 1990.

We are not seeking from this Court a ruling on the fact findings of the District Court. However, appellants appeal the legal holding that the Declaratory Judgment Act does not provide for attorneys fees for these time periods spent in monitoring the Legislature's reaction to the Supreme Court opinion, or in seeking to enforce their judgment by resisting the Legislature's efforts to delay.

As prevailing parties, the Appellants are appropriately entitled to compensation for time reasonably expended in monitoring and enforcing the trial court's judgment. Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 106 S.Ct. 3088 (1986) (affirming fee compensation for administrative agency advocacy aimed at defending and enforcing federal court consent judgment under the Clean Air Act). In Pennsylvania, compensation for post-judgment services was particularly appropriate where the litigation involved major institutional reform. Similarly, the Fifth Circuit has uniformly awarded attorney's fees for post-judgment hours where the services performed were for reasonable monitoring and for enforcing the decree. Miller v. Carson, 628 F.2d 346, 348 (5th Cir. 1980); Wilson v. Southwest Airlines, 880 F.2d 807 (5th Cir. 1989); Adams v. Mathis, 752 F.2d 553, 554 (11th Cir. 1985).

VI.

PRAYER

Appellants pray that the Supreme Court affirm the finding of the District Court that Senate Bill 1 is unconstitutional, but reverse the judgment of the court and render a judgment along these lines:

1. The District Court shall order the Defendants to implement the Uribe/Luna plan as exemplified in Plaintiffs exhibits 16 and 17 for the 1991-92 and 1992-93 school years at the levels of expenditure contemplated in the fiscal notes accompanying Senate Bill 1.

2. If the Legislature passes and the Governor signs by April 1, 1991, a plan that would guarantee equal access to funds for 100% of children of the state with 99% of children in the state living in districts which would have access to those funds at the same tax rates, then, with the burden upon the state, the state's plan would be put into effect.

3. Alternatively, the Appellants pray that this court issue guidelines requiring at least the following elements in any school finance plan that meets the standards of Edgewood v. Kirby:

a. 100% of children in the state must live in districts that have the same access to the same total revenues at any tax rate with a maximum of 1% of children state living in districts that can obtain the maximum level of funding at tax rates lower than that required in the other 99%.

b. The plan must make maximum use of all of the state's property base and preclude overconcentration of revenue raising capacity in any district or class of districts. Those districts in Texas with $500,000 dollars of property or more per student must be required to use their resources for the benefit of all students in their counties and the state by either consolidation or consolidation of tax bases.

c. The plan must provide immediate state funding for school facilities and long term equalized funding for school facilities. Factors which must be included in a funding formula include the wealth, existing debt obligations, age of instructional facilities and growth rates of districts.

d. The Available School Fund revenues must be equitably distributed within the counties. Available School Fund revenues currently distributed on a per capita basis should be allocated to counties and redistributed to districts on the basis of their property wealth per weighted student.

e. The state must set tight limits on any remaining unequalized enrichment in the system.

f. The plan must provide for automatic maintenance of an equitable system through the implementation of education as a first call on the state budget (after constitutionally required funds), through the institution of limitations on unequalized expenditures or revenues, and county or state wide use of excess revenues collected by the school districts.

4. As a third alternative Appellants pray that this Court return the matter to the District Court for the implementation of the Uribe/Luna plan or some alternative, equally equitable plan, or as the last alternative that the District Court, after hearing from the parties either through argument or evidence or both implement a series of elements of a constitutional plan which would be immediately appealable to this court.

5. Given the date of these proceedings, the quickest most efficient and certainly most equitable method of deciding this appeal would be for this court to specify the plan or at least the elements that any plan must meet. This would give a clear unambiguous and final message to the Legislature on what must be done to meet the constitutional obligation, and prevent further

delay.

6. The Court should remand the attorneys fees issue to the District Court for rendition of a judgment of reasonable and necessary attorneys fees to Plaintiffs for legal work since July 5, 1989, the date of the previous argument of this case.

CONCLUSION

Such an order is required to allow at least some of the students of this century to be educated in a constitutional state school system.

DATED: November 5, 1990

Respectfully submitted,

ANTONIA HERNANDEZ
NORMA V. CANTU
JOSE GARZA
JUDITH A SANDERS-CASTRO
ALBERT H. KAUFFMAN
GUADALUPE T. LUNA
Mexican American Legal Defense
and Educational Fund
140 E. Houston St., Ste. 300
San Antonio, Texas 78205
(512) 224-5476

ROGER RICE
PETER ROOS
CAMILO PEREZ
META, INC.
50 Broadway
Somerville, MA 02144

Albert H. Kauffman

ALBERT H. KAUFFMAN
ATTORNEYS FOR APPELLANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of Appellants was sent federal express or hand delivered on this 5th day of November, 1990 to the following attorneys of record:

Mr. Kevin T. O'Hanlon
General Counsel
Texas Education Agency
1701 North Congress
Austin, TX 78701

Toni Hunter
Assistant Attorney General
P.O. Box 12548
Capitol Station
Austin, TX 78711-2548

Mr. Earl Luna
Law Offices of Earl Luna
4411 N. Central Expressway
Dallas, TX 75205

Mr. David Richards
Richards, Wiseman & Durst
600 West 7th Street
Austin, TX 78701

Mr. Richard E. Gray, III
Gray & Becker
900 W. Avenue, #300
Austin, TX 78701

Mr. Jerry R. Hoodenpyle
Rohne, Hoodenpyle, Lobert & Myers
P.O. Box 13010
Arlington, TX 76013

Albert H. Kauffman
ALBERT H. KAUFFMAN
ATTORNEY FOR APPELLANTS

D 0378 DIRECT APPEAL

NO. D-0378

IN THE

SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Appellants,

V.

WILLIAM N. KIRBY, ET AL.,

Appellees.

APPENDIX TO BRIEF OF APPELLANTS' EDGEWOOD I.S.D., ET AL.

ANTONIA HERNANDEZ
NORMA V. CANTU
JOSE CARZA
JUDITH A SANDERS-CASTRO
ALBERT H. KAUFFMAN
GUADALUPE T. LUNA
Mexican American Legal Defense
& Educational Fund
140 E. Houston St., Ste. 300
San Antonio, Texas 78205
(512) 224-5476

ROGER RICE
CAMILO PEREZ
PETER ROOS
META, INC.
50 Broadway
Somerville, MA 02144

ATTORNEYS FOR APPELLANTS

APPENDIX TO BRIEF OF APPELLANTS EDGEWOOD ISD

TABLE OF CONTENTS

The State of Texas

SECRETARY OF STATE

I, GEORGE S. BAYOUD, JR., Secretary of State of the State of Texas, DO HEREBY CERTIFY that the attached is a TRUE AND CORRECT copy of Senate Bill 1, passed by the 71st Legislature, Sixth Called Session, 1990, as signed by the Governor on June 7, 1990, and filed in this office on June 7, 1990.

THE STATE OF TEXAS

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this

14th *day of* June, *A.D. 19* 90

George S Bayoud Jr.

Secretary of State

AN ACT

relating to public education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE I. FINANCE

SECTION 1.01. Section 16.001, Education Code, is amended to read as follows:

Sec. 16.001. STATE POLICY. (a) It is the policy of the State of Texas that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any similar student, notwithstanding varying local economic factors.

(b) The public school finance system of the State of Texas shall adhere to a standard of fiscal neutrality which provides for substantially equal access to similar revenue per student at similar tax effort.

(c) The program of state financial support designed and implemented to achieve these policies shall include adherence to the following principles:

(1) the yield of state and local educational program revenue per pupil per cent of effective tax effort shall not be statistically significantly related to local taxable wealth per

student for at least those districts in which 95 percent of students attend school; and

(2) the level of state and local revenues for which equalization is established shall include funds necessary for the efficient operation and administration of appropriate educational programs and the provision of financing for adequate facilities and equipment.

(d) Future legislatures are free to use other methods to achieve substantially equal access to similar revenues per student at similar tax effort. These methods may involve minimum tax efforts, redefining the tax base, and other ways to equalize. However, adherence to the state policy described in this section shall be maintained.

SECTION 1.02. Section 16.004, Education Code, is amended to read as follows:

Sec. 16.004. SCOPE OF PROGRAM. Under the Foundation School Program, a school district may receive state financial aid for programs, services, facilities, and equipment, including personnel salaries, current operating expenses, categorical programs, and transportation services. The amount of state aid to each school district shall be based on the district's ability to support its public schools.

SECTION 1.03. Section 16.006, Education Code, is amended to read as follows:

Sec. 16.006. AVERAGE DAILY ATTENDANCE. (a) In this chapter, average daily attendance is determined by the daily

attendance as averaged each month of the minimum school year as described under Section 16.052(a) of this code [best-four-weeks-of eight-weeks-of-attendance.--The-State-Board-of--Education--. --rule shall--prescribe--the-eight-weeks-for-which-attendance-records-must be-maintained-by-all-districts-for-this-purpose,--except--that--the records-must-be-kept-for-four-weeks-of-each-regular-semester].

(b) For the school year 1990-1991 only, the number of students in average daily attendance under the definition described in Subsection (a) of this section shall not be less than 98 percent of the number of students that would be obtained under the definition used for the 1989-1990 school year.

(c) A school district that experiences a decline of two percent or more in average daily attendance as a result of the closing or reduction in personnel of a military base shall be funded on the basis of the actual average daily attendance of the immediately preceding school year.

SECTION 1.04. Subchapter A, Chapter 16, Education Code, is amended by adding Section 16.008 to read as follows:

Sec. 16.008. EQUALIZED FUNDING ELEMENTS. (a) The Legislative Education Board shall adopt rules, subject to appropriate notice and opportunity for public comment, for the calculation for each year of a biennium of the qualified funding elements necessary to achieve the state funding policy under Section 16.001 of this code not later than the 1994-1995 school year and for each school year thereafter.

(b) The funding elements shall include:

(1) a basic allotment for the purposes of Section 16.101 of this code that represents the cost per student of a regular education program that meets the basic criteria for an accredited program including all mandates of law and regulation;

(2) the formula or other provision for the cost of education index designed to reflect the geographic variation in known resource costs and costs of education beyond the control of school districts for the purposes of Sections 16.102 and 16.103 of this code;

(3) appropriate program cost differentials and other funding elements for the programs authorized under Subchapter D of this chapter, with the program funding level expressed as dollar amounts and as weights applied to the adjusted basic allotment for the appropriate year;

(4) the maximum guaranteed level of qualified state and local funds per student for the purposes of Subchapter H of this chapter that represents the costs as determined and limited under Subchapter F of this chapter for exemplary programs including the cost of facilities and equipment until such time as a funding formula for capital outlay and debt service is adopted under Subchapter I of this chapter;

(5) the total tax rates for the local funding requirements of Section 16.252 of this code and Subchapter H of this chapter, including tax rates for capital outlay and debt service until such time as a funding formula for capital outlay and debt service is adopted under Subchapter I of this chapter; and

(6) the formula elements for the funding formulas for capital outlay and debt service under the provisions of Subchapter I of this chapter.

(c) Beginning in 1992, not later than October 1 preceding each regular session of the legislature, the board by rule shall report the equalized funding elements calculated under Subsection (b) of this section to the foundation school fund budget committee, the commissioner of education, and the legislature.

(d) Notwithstanding other provisions of this section, the report and recommendations of the Legislative Education Board for the 1993-1994 school year and the 1994-1995 school year shall provide for appropriate transition from the program in effect for the 1992-1993 school year.

SECTION 1.05. Section 16.101, Education Code, is amended to read as follows:

Sec. 16.101. BASIC ALLOTMENT. For each student in average daily attendance, not including the time students spend each day in special education or vocational education programs for which an additional allotment is made under Subchapter D of this chapter, a district is entitled to an allotment of $1,910 [~~$1,477~~] for the 1990-1991 [~~1989-1990~~] school year, $2,128 for the 1991-1992 and 1992-1993 school years, and $2,128 or an amount adopted by the foundation school fund budget committee under Section 16.256 of this code for the 1993-1994 school year and [~~$1,500--for~~] each school year thereafter. A[~~,-or-a~~] greater amount for any school year may be provided by appropriation.

SECTION 1.06. Subsection (a), Section 16.151, Education Code, is amended to read as follows:

(a) For each full-time equivalent student in average daily attendance in a special education program under Subchapter N, Chapter 21, of this code, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to instructional arrangement, which for the 1989-1990 and 1990-1991 school years is as follows:

Homebound	5.0
Hospital class	5.0
Speech therapy	7.11
Resource room	2.7
Self-contained, mild and moderate, regular campus	2.3
Self-contained, severe, regular campus	3.5
Self-contained, separate campus	2.7
Multidistrict class	3.5
Nonpublic day school	3.5
Vocational adjustment class	2.3
Community class	3.5
[Self-contained, pregnant	2.0]
Mainstream	0.25

SECTION 1.07. Subsection (a), Section 16.152, Education Code, is amended to read as follows:

(a) For each student who is educationally disadvantaged or

who is a nonhandicapped student residing in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.2 and 2.41 for each full-time equivalent student who is in a remedial and support program under Section 21.557 of this code because the student is pregnant[~~, subject to Subsection (e) of this section~~].

SECTION 1.08. Subsection (c), Section 16.152, Education Code, is amended to read as follows:

(c) Funds allocated under this section, other than an indirect cost allotment established under State Board of Education rule, which shall not exceed 15 percent, must be used in providing remedial and compensatory education programs under Section 21.557 of this code, and the district must account for the expenditure of state funds by program and by campus. Funds allocated under this section, other than the indirect cost allotment, shall only be expended for supplemental purposes in addition to those programs and services funded under the regular education program of the district from all funding sources.

SECTION 1.09. Section 16.252, Education Code, is amended to read as follows:

Sec. 16.252. LOCAL SHARE OF PROGRAM COST. (a) Each school district's share of its Foundation School Program shall be an amount determined by the following formula: